

The Frequency, Predictability, and Proportionality of Jury Awards of Punitive Damages in State Courts in 2005: A New Audit

Neil Vidmar & Mirya Holman¹

The state of punitive damages in the United States has been a controversial topic for more than three decades, resulting in litigation reaching the U.S. Supreme Court and state supreme courts. Various business advocacy groups have sought to drastically curb or eliminate punitive damages while plaintiffs' lawyers and consumer groups vigorously defend the use of punitive damages. State legislatures have responded with many substantive and procedural reforms over the years. Yet, in *Exxon Shipping Co. v. Baker*,² the United States Supreme Court, while approvingly citing empirical evidence indicating that there are "not mass-produced runaway awards"³ and that "by most accounts the median ratio of punitive to compensatory awards has remained less than 1:1,"⁴ once again expressed concerns about punitive awards exceeding a single-digit ratio to compensatory damages and the predictability of punitive awards. A full understanding of the issues involved in the punitive damages controversy requires consideration of the causes of action, the magnitude of both compensatory and punitive claims, the ratios of these two outcomes, and a qualitative understanding of the nature of punitive awards. This article presents a profile of punitive damages awarded by juries in 2005 using the U.S. Bureau of Justice Statistics' Civil Justice Survey of State Courts. We supplement the BJS survey with an additional sample of punitive damages claims from nine states in 2005. This additional database provides more details about the disputes and procedural matters associated with the trials. The data show that there are case-type patterns in the awarding of punitive damages that contradict claims about punitive awards, especially those involving product liability cases, and that the ratio of punitive to compensatory damages is a complex matter not

1. Vidmar is the Russell M. Robinson II Professor of Law and Professor of Psychology at Duke University. Holman is an Assistant Professor of Political Science at Florida Atlantic University. The authors are indebted to Michael Quick for his excellent research assistance, to George Christie for comments on an earlier draft of this paper, and to Ted Eisenberg and the participants on a panel at the Conference on Empirical Legal Scholarship at the University of Southern California in 2009. Finally, and especially, the authors are indebted to Michael Rustad for his insightful comments and encouragement.

2. 128 S. Ct. 2605 (2008).

3. *Id.* at 2624 (surveying punitive damage literature).

4. *Id.* at 2624 (describing relative evenness of damage awards).

easily resolved without consideration of the underlying factual bases of the claims.

I. INTRODUCTION

Litigation involving punitive damages has been before the U.S. Supreme Court and various state supreme courts numerous times since the 1980s.⁵ Central issues in the litigation have involved the relationship between punitive to compensatory damages, the purposes of punitive damages, and limitations on when, how, and why juries and judges might award punitive damages. Various advocacy groups, including the American Tort Reform Association and the U.S. Chamber of Commerce, have sought strict limits on the amounts that can be awarded for punitive damages, especially in product liability, premises liability, and similar lawsuits that involve businesses as defendants. These groups argue that the threat of punitive damages stifles innovation and harms American businesses.⁶ In contrast, consumer groups and plaintiffs' lawyers assert that punitive damages are necessary, because they are a method of deterring extraordinary negligence and compensating victims for social wrongs.⁷

The Supreme Court, in opinions from *Pacific Mutual Life Insurance Co. v.*

5. See, e.g., Michael L. Rustad, The Closing of Punitive Damages' Iron Cage, 38 LOY. L. REV. 1297 (2005); Neil Vidmar & Matthew Wolfe, Punitive Damages, 5 ANN. REV. OF L. & SOC. SCI. 179 (2009); *Developments: The Paths of Civil Litigation*, 113 HARV. L. REV. 1752 (2000).

6. See, e.g., Brief of the Chamber of Commerce of the United States of America as Amicus Curiae Supporting Petitioner, *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (No. 05-1256); Brief of Oregon Forest Industries Council & Oregon Grocers Ass'n et al. as Amici Curiae Supporting Petition for Writ of Certiorari, *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (No. 05-1256); Brief of the Product Liability Advisory Council, Inc., as Amicus Curiae Supporting Petitioners, *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (No. 05-1256); Brief of the Chamber of Commerce of the United States of America as Amicus Curiae Supporting Petitioners, *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008) (No. 07-219); Brief of Washington Legal Foundation as Amicus Curiae Supporting Petitioners, *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008) (No. 07-219); Brief of the Product Liability Advisory Council, Inc., as Amicus Curiae Supporting Petitioners, *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008) (No. 07-219); Brief of the Chamber of Commerce of the United States of America as Amicus Curiae Supporting Petitioner, *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); Brief of the Product Liability Advisory Council, Inc., & the Business Roundtable et al. as Amici Curiae Supporting Petitioner, *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) (No. 94-896); AM. TORT REFORM FOUND. JUDICIAL HELLHOLES 2009/2010 (2009); VICTOR E. SCHWARTZ & CARY SILVERMAN, U.S. CHAMBER INST. FOR LEGAL REFORM, 101 WAYS TO IMPROVE STATE LEGAL SYSTEMS: A USER'S GUIDE TO PROMOTING FAIR AND EFFECTIVE CIVIL JUSTICE (2009).

7. See, e.g., Brief of Federal Procedural Scholars as Amicus Curiae Supporting Respondent, *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (No. 05-1256); Brief of Oregon Trial Lawyers Ass'n as Amicus Curiae Supporting Respondent, *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (No. 05-1256); Brief of Sociologists, Psychologists, and Law and Economics Scholars as Amici Curiae Supporting Respondents, *Exxon Shipping Co. v. Baker* 128 S. Ct. 2605 (2008) (No. 07-219); Brief of the Ass'n of Trial Lawyers of America as Amicus Curiae Supporting Respondents, *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (No. 01-1289); Brief of Certain Leading Social Scientists and Legal Scholars as Amici Curiae Supporting Respondents, *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (No. 01-1289); CTR. FOR JUSTICE & DEMOCRACY, ENVIRONMENTAL TORT LAWSUITS: HOLDING POLLUTERS ACCOUNTABLE (2008); CTR. FOR JUSTICE & DEMOCRACY, PUNITIVE DAMAGES: RARE, REASONABLE, AND EFFECTIVE (2007).

Haslip,⁸ *BMW of North America, Inc. v. Gore*,⁹ *State Farm Mutual Automobile Insurance Co. v. Campbell*,¹⁰ *Philip Morris USA v. Williams*,¹¹ to *Exxon Shipping Co. v. Baker*,¹² has expressed concern about the magnitude of some punitive damage awards, especially the ratio of punitive to compensatory damages and their relation to case characteristics. In *BMW*, the Court stated that “low awards of compensatory damages may properly support a higher ratio [of punitive to compensatory damages] if, for example, a particularly egregious act has resulted in only a small amount of economic damages.”¹³ The *BMW* Court outlined a three-factor test for evaluating whether a punitive damage was excessive: (1) the reprehensibility of the defendant’s conduct; (2) the disparity between the compensatory award and the punitive damage award; and (3) the existence and amount of any alternative state sanctions for similar misconduct.¹⁴ In *BMW* and again in *State Farm*, the Court further expressed a guideline indicating that harms involving financial injury should be seen as less deserving of high punitive damages ratios than harms involving personal injuries. In *Haslip*, the Court found that a punitive to compensatory damage ratio of 4:1 was “close to the line” on unconstitutionality.¹⁵ In *State Farm*, the Court suggested that ordinarily punitive damages should not exceed compensatory damages, and a ratio of single digit (that is, 9:1) is the outer limit of punitive to compensatory damages.¹⁶ The Court further stated “[o]ur jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”¹⁷

Yet, Michael Rustad, in his review of punitive damages legislation across the United States, argued that when state legislatures have decided that punitive damages are a problem, they have enacted substantive or procedural reforms intended to curb excesses.¹⁸ The procedural reforms include restrictions on pleading, discovery, evidence, jury instructions, increases in the standard of

8. 499 U.S. 1 (1991).

9. 517 U.S. 559 (1996).

10. 538 U.S. 408 (2003).

11. 549 U.S. 346 (2007).

12. 128 S. Ct. 2605 (2008).

13. See *BMW*, 517 U.S. at 582.

14. See *BMW*, 517 U.S. at 574-75. See generally Virginia Canipe, Note, *Crossing the Excessiveness Line: The Implications of BMW v. Gore on Multi-Billion Dollar Tobacco Litigation Punitive Damages*, 36 WAKE FOREST L. REV. 1157 (2001); Son B. Nguyen, Note, *BMW of North America, Inc. v. Gore: Elevating Reasonableness in Punitive Damages to a Doctrine of Substantive Due Process*, 57 MD. L. REV. 251 (1998).

15. See *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 (1991); see also *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 581 (1996) (reiterating holding in *Haslip*).

16. See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

17. *Id.* (citing *Haslip* and *Gore*).

18. See Rustad, *supra* note 5, at 1300-01 (noting various state legislative reforms involving punitive damages); see also Sheila B. Scheuerman & Anthony J. Franze, *Instructing Juries on Punitive Damages: Due Process Revisited After Philip Morris v. Williams*, 10 U. PA. J. CONST. LAW 1147, 1168-91 (2008) (noting states’ revisions to punitive damage instructions after *Haslip* and *State Farm*).

proof for punitive damages, and devices such as bifurcation and restrictions on the use of wealth to ensure greater judicial control over punitive awards, while substantive reforms include caps on the amount of the punitive damage award. Indeed, Rustad argued that the U.S. Supreme Court and state legislatures “have constructed a pro-defendant *iron cage*” around punitive damages.¹⁹ The circumstances under which punitive damages are allowed and the relationship between compensatory and punitive damages vary dramatically from state to state.²⁰ As shown in Appendix A, in all but five states that allow punitive damages, such awards are substantially limited, either in definition or in application.²¹

Empirical research on punitive damages generally suggests that punitive damages do not endanger the legal system. Specifically, scholars have found that punitive awards have not increased in frequency over time; most awards are modest in size and show a reasonable proportionality between harm and potential harm of conduct; juries pay particular attention to the reprehensibility of conduct; and there is little evidence supporting the claim that juries are biased against businesses.²² The most recent U.S. Supreme Court case involving punitive damages, *Exxon Shipping Co. v. Baker*, concerned maritime law but has implied relevance for state tort law. Therein, the Court agreed with the empirical findings, but with a major reservation.

Justice Souter, writing for the *Exxon Shipping* majority, reviewed part of the body of empirical evidence bearing on punitive damages.²³ He concluded that empirical research showed that there are “not mass-produced runaway awards”²⁴ and that “by most accounts the median ratio of punitive to compensatory awards has remained less than 1:1.”²⁵ Justice Souter also concluded that the research showed no marked increase in awards over the past several decades. Nevertheless, he asserted, “the real problem, it seems, is the stark unpredictability of punitive awards.”²⁶ He went on to refer to an analysis of the Civil Justice Survey of State Courts conducted by the Bureau of Justice Statistics (BJS), concluding:

A recent comprehensive study of punitive damages awarded by juries in state civil trials found a median ratio of punitive to compensatory awards of just

19. See Rustad, *supra* note 5, at 1301 (discussing constraints on punitive damage awards).

20. See Appendix A (surveying legal and monetary limits on punitive damages by state).

21. See *id.* (indicating punitive damages not allowed in Louisiana, Massachusetts, Nebraska, New Hampshire, and Washington).

22. See Brief of Neil Vidmar & Brian Bornstein et al. as Amici Curiae Supporting Respondent, *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (No. 05-1256) (reciting empirical findings indicating juries perform reasonably).

23. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2624-27 (2008) (citing punitive damage research).

24. *Id.* at 2624.

25. *Id.*

26. *Id.* at 2625.

0.62:1, but a mean ratio of 2.90:1 and a standard deviation of 13.81 Even to those of us unsophisticated in statistics, the thrust of these figures is clear: the spread is great, and the outlier cases subject defendants to punitive damages that dwarf the corresponding compensatories Other studies of some of the same data show that fully 14% of punitive awards in 2001 were greater than four times the compensatory damages . . . with 18% of punitives in the 1990s more than trebling the compensatory damages And a study of “financial injury” cases using a different data set found that 34% of the punitive awards were greater than three times the corresponding compensatory damages.²⁷

Theodore Eisenberg, Michael Heise, and Martin Wells have replied to Justice Souter’s analysis, arguing that Justice Souter missed the fact that variability of awards relates to the level of the compensatory awards.²⁸ To demonstrate this argument, Eisenberg and his co-authors reexamined the results of the study relied upon by the Court in *Exxon Shipping*. By comparing the levels of compensatory awards with the punitive award, those authors concluded that most of the variability in the punitive to compensatory award ratios was associated with cases at the low end of compensatory damage awards, specifically those involving less than \$10,000 in compensatory damages.²⁹ In cases involving compensatory awards under \$1000, the mean ratio was roughly 100:1, and cases involving compensatory awards under \$10,000 had a ratio of approximately 10:1.³⁰ However, for cases involving over \$10,000 in compensatory damages, the mean ratios were approximately 1.5:1 with standard deviations ranging from 1.31 to 3.58.³¹ In short, a substantial amount of the variability in the punitive to compensatory damage ratios was associated with cases on the very low end of the monetary scale.

The research of Eisenberg and his co-authors represents an important contribution to understanding the profile of punitive damages, but it is incomplete. Previous research by Rustad, Eisenberg, and Vidmar and Rose has drawn attention to the causes of action as factors related to the likelihood and magnitude of punitive damages.³² For example, Vidmar and Rose’s research

27. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2625 (2008) (citations omitted); see generally Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages: Empirical Analyses Using the Civil Justice Survey of State Courts 1992, 1996, and 2001 Data*, 3 J. EMPIRICAL LEGAL STUD. 263 (2006).

28. See Theodore Eisenberg et al., *Variability in Punitive Damages: An Empirical Assessment of the U.S. Supreme Court’s Decision in Exxon Shipping v. Baker* (Cornell Law Sch. Legal Studies Research Paper Series, Paper No. 09-011), available at <http://ssrn.com/abstract=1392438>.

29. See *id.* at 14 (highlighting punitive-compensatory ratio).

30. See *id.* at 15, Table 2 (presenting summary statistics of jury cases involving punitive and compensatory damages).

31. See *id.* at 15, Table 2 (analyzing summary statistics).

32. See generally Theodore Eisenberg et al., *The Predictability Of Punitive Damages*, 26 J. OF LEGAL STUD. 623 (1997) (noting strong correlation between punitive and compensatory damages); Michael L. Rustad, *Unraveling Punitive Damages: Current Data and Further Inquiry*, 1998 WISC. L. REV. 15 (1998) (indicating no nationwide punitive damage crisis); Michael Rustad, *In Defense of Punitive Damages in Product Liability: Testing Tort Anecdotes with Empirical Data*, 78 IOWA L. REV. 1 (1992) (suggesting punitive damage awards in

indicates that, in Florida, while the median ratio of punitive to compensatory damages over all cases between 1989 and 1998 was 0.67:1, there was substantial variability across case types.³³ Cases involving funeral homes' improper treatment of dead persons had a median ratio of 6.3:1, while cases involving discrimination or harassment claims had a ratio of 2.3:1.³⁴ Vidmar and Rose also documented nuances in juries' application of punitive damages within the subset of products and premises liability cases.³⁵ In one case a jury awarded only compensatory damages against a corporate defendant but levied punitive damages (in a modest amount) against its drunken employee who was driving the delivery truck that injured the plaintiff.³⁶

It is important to observe that the Supreme Court itself has been inconsistent in its application of the proportionality ratio. Although in *State Farm* Justice Kennedy, writing for the majority, asserted, "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process," the Court previously acknowledged that there are cases in which the compensable injury will be small but the reprehensibility of the conduct is great.³⁷ Thus, in 1993 the Court approved an extremely large ratio in a case involving a financial injury. *TXO Production Corp. v. Alliance Resources Corp.*³⁸ involved a business dispute over an oil and gas contract. The Court upheld a jury award of \$10,000,000 in punitive damages compared to a compensatory damage award of only \$19,000 (a 526:1 ratio), describing the behavior of TXO as "egregiously tortious conduct."³⁹ In March 2009, the Court denied certiorari in a re-appeal of the *Philip Morris USA v. Williams* verdict, thus tacitly allowing a punitive award of \$79,500,000 against a compensatory award of \$502,100, yielding a punitive to compensatory ratio of 158:1.⁴⁰

In the present research, we focus only on jury verdicts and ignore verdicts rendered by judges in bench trials. We do so on the grounds that most of the criticism regarding punitive damages centers on the jury and that cases decided in bench trials tend to be different than cases decided by juries, making

products liability cases should be studied empirically); Neil Vidmar & M. R. Rose, *Punitive Damages by Juries in Florida: In Terrorem and in Reality*, 38 HARV. J. ON LEGIS. 487 (2001) (studying punitive damage awards in Florida).

33. See Vidmar & Rose, *supra* note 32, at 493-94 (noting variability in median across years explained by case type).

34. See *id.* at 500 (discussing variability of awards by cause of action).

35. See *id.* at 496-500 (noting punitives awarded in 16 of 20 products liability, 14 of 17 premises liability cases).

36. See *id.* at 500 (reciting facts of premises liability case involving alcohol consumption).

37. 538 U.S. 408, 425 (2003).

38. 509 U.S. 443 (1993).

39. *Id.* at 466.

40. See *Philip Morris USA Inc. v. Williams*, 129 S. Ct. 1436 (2009) (dismissing writ of certiorari as improvidently granted).

comparisons difficult.⁴¹

We first develop a profile of punitive damages from the 2005 Civil Justice Survey of State Courts.⁴² We supplement these data with a second database involving punitive damages claims in Arizona, California, Florida, Illinois, Missouri, New Jersey, New York, Pennsylvania, and Texas. Using Westlaw, we developed a systematic search method that provided qualitative information on the wide variety of cases reported in 2005 by jury verdict reporters. While verdict reporters are selective in reporting cases, they do contain additional verdicts outside of the selected counties of the BJS data and, more importantly for our present purpose, they often provide rich qualitative details about causes of action and procedural processes associated with the case and resulting verdict. These details provide insight bearing on the litigation outcome.⁴³

II. METHOD

The first part of our analysis uses the 2005 Civil Justice Survey of State Courts. Although the 2005 survey added additional counties to its list of surveyed courts, the present report is based upon the publicly available data archived in the Interuniversity Consortium for Political and Social Research (ICPSR) at the University of Michigan. The data provide information on all completed civil jury cases from the forty-six largest county courts in the United States. These data are statistically representative of the seventy-five largest county courts in the United States.⁴⁴ As mentioned above, in contrast to previous surveys, the 2005 data include a variable indicating whether, in the pleadings, either party requested punitive damages. These new data on requests for punitive damages allow for a more accurate measure of the rate of prevailing in cases with claims for punitive damages.

To complement the BJS data, we constructed a database from verdict reporters in Westlaw for all jury trial cases resolved in 2005 where the court reporter mentions punitive damages. Using Westlaw's jury verdict reporters for each state, we searched for "punitive damages," excluding all cases that did not match our criteria.⁴⁵ The cases are from Arizona (forty-five cases),

41. See Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages: Empirical Analyses Using the Civil Justice Survey of State Courts 1992, 1996, and 2001 Data*, 3 J. EMPIRICAL LEGAL STUD. 263, 263-65 (2006) (distinguishing jury- from court-awarded damages).

42. See generally LYNN LANGTON & THOMAS H. COHEN, U.S. DEP'T OF JUSTICE, CIVIL BENCH AND JURY TRIALS IN STATE COURTS, 2005 (2008) (providing statistics regarding damage award amounts). The 2005 survey added a new variable that was not coded in the 1992, 1996 and 2001 surveys, namely whether punitive damages were requested in the pleadings by one of the parties. This allows us to estimate the success rates when plaintiffs seek punitive damages.

43. See Cynthia Lee & Nicole Waters, *A Verdict on the Reporters: The Representativeness of Commercially Published Jury Reports*, Presentation at the Annual Meeting of the Law and Society Association (May 25, 2009) (noting discrepancy between Civil Justice Survey data and jury verdict reports).

44. See <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/23862> (collecting data on general civil and non-trial 2005 matters).

45. We coded by: (1) state; (2) Westlaw number; (3) whether the case was tried by a jury; (4) the date of

California (eighty-five cases), Florida (thirty-four cases), Illinois (twenty cases), Missouri (forty-seven cases), New York (thirty-three cases), New Jersey (fifteen cases), Pennsylvania (thirteen cases), and Texas (110 cases). Although Lee and Waters' 2009 research indicates that verdict reports are often not representative of all the cases appearing in the courts, they often contain information bearing on the procedural details after the filing of the claims and the substantive content of the claims. Both of these pieces of information allow inferences as to why the jury awarded or did not award punitive damages and on the amounts of the awards.

III. RESULTS FROM THE BJS DATABASE

A. Frequency of Punitive Damage Requests

We first examine how frequently either party requests punitive damages. Typically, the party is the plaintiff; but in some instances, such as business disputes, the defendant asks for punitive damages by counterclaim. The bottom row in Table 1 reports that in the forty-six largest counties in the U.S. in 2005, there were 6472 cases tried by juries. Punitive damages were requested in 567 instances, or approximately 9% of all jury trials.

Table 1 disaggregates these overall data by the causes of action as categorized by the BJS coding system reporting the number of times that at least one of the parties requested punitive damages.

TABLE 1: TOTAL AND PUNITIVE DAMAGES, BY CLAIM TYPE

PLAINTIFF CLAIM TYPE	NUMBER OF CASES	PERCENT OF ALL TRIALS	NUMBER OF CASES REQUESTING PUNITIVE DAMAGES	PERCENT OF CASES REQUESTING PUNITIVE DAMAGES
Motor Vehicle Tort	2,673	42%	92	3%
Premises Liability	803	12%	22	3%
Product Liability (Asbestos)	51	1%	6	12%

the verdict; (5) the claim type according to the BJS category.; (6) the type of tort involved, including personal injury, dignitary, and financial injury; (7) the number of plaintiffs; (8) the number of defendants; (9) the amount sought in damages; (10) whether the plaintiff prevailed on any compensatory negligence defense; (11) the total amount of compensatory award; (12) whether the plaintiff prevailed on a punitive negligence claim; (13) the total amount of the punitive award, if any; (14) reasons the plaintiff did not prevail on punitive claim, including that: (a) the judge refused to allow before trial; (b) the judge allowed plaintiff to argue claim but refused to instruct jury; (c) the jury refused to award punitives; (d) the jury awarded punitives, but the judge rejected the award in judgment; (e) the parties settled the punitive damages claim during or before trial; (f) the jury found punitive negligence but gave no punitives; (15) the jury awarded punitives but the judge remitted the amount (1 = yes; 2 = no); (16) a brief synopsis of the case and any unusual characteristics.

2010]

PUNITIVE DAMAGES IN STATE COURTS IN 2005: A NEW AUDIT

863

Product Liability (Other)	118	2%	13	11%
Intentional Tort	212	3%	49	23%
Malpractice (Medical)	980	15%	58	6%
Malpractice (Other)	51	1%	5	10%
Slander, Libel, Defamation	40	1%	18	45%
Animal Attack	39	1%	6	15%
Conversion	29	0%	12	41%
False Arrest /Imprisonment	22	0%	4	18%
Other Negligence	170	3%	13	8%
Fraud	255	4%	71	28%
Seller Plaintiff (Contract)	166	3%	18	11%
Buyer Plaintiff (Contract)	315	5%	45	14%
Mortgage Foreclosure	5	0%	1	20%
Employment (Discrimination)	117	2%	42	36%
Employment (Other)	117	2%	34	29%
Rental/Lease Agreement	51	1%	9	18%
Intentional/Tortious Interference	51	1%	18	35%
Partnership Dispute	21	0%	7	33%
Other/Unknown Commercial	47	1%	11	23%
Subrogation	6	0%	2	33%
Eminent Domain/Condemnation	54	1%	0	0%
Title or Boundary Dispute	26	0%	8	31%
Other/Unknown Real Property	8	0%	3	38%
Total/ Average Percent	6,427	99%	567	8.8%

Table 1 demonstrates that plaintiffs' requests for punitive damages varied significantly by cause of action. Requests for punitive damages were most frequently made in suits involving slander or defamation (45%), conversion

(41%), real property disputes (38%), employment discrimination (36%), tortious interference (35%), partnership disputes (33%) and subrogated claims (33%). Plaintiffs in cases involving motor vehicle claims (3%), premises liability claims (3%) and medical malpractice claims (6%) rarely sought punitive damages. In non-asbestos product liability cases, one of the most frequently cited topics in the controversy over punitive damages, punitive damages were only requested 11% of the time.⁴⁶

B. The Likelihood of Prevailing on General Negligence and Punitive Damages

Ordinarily, the party requesting punitive damages cannot prevail unless first prevailing on the claim of general compensatory negligence.⁴⁷ There is a general presumption that a party making a claim for punitive damages has a strong case for compensatory negligence. The second issue of interest relating to claims for punitive damages is the likelihood of the jury awarding punitive damages. Table 2 reports the frequency with which the party requesting punitive damages prevailed.

TABLE 2: PLAINTIFF WINS BY PLAINTIFF CLAIM TYPE

PLAINTIFF CLAIM TYPE	PUNITIVE DAMAGES REQUESTED	WINS ON COMPENSATORY	PERCENT WIN ON COMPENSATORY	WINS ON PUNITIVE	PERCENT WIN ON PUNITIVE
Motor Vehicle Tort	92	59	64%	12	13%
Premises Liability	22	9	41%	1	5%
Product Liability (Asbestos)	6	2	33%	1	17%
Product Liability (Other)	13	1	8%	0	0%
Intentional Tort	49	33	67%	21	43%
Malpractice (Medical)	58	16	28%	4	7%
Malpractice (Other)	5	3	60%	1	20%
Slander, Libel, Defamation	18	12	67%	9	50%

46. Nineteen of the punitive damages cases arising out of product litigation involved prescription drugs (such as Phen-fen), while three involved tobacco.

47. See *Wells v. Smith*, 297 S.E.2d 872, 881 (W. Va. 1982) (affirming jury award of punitive damages notwithstanding lack of compensatory damages). The West Virginia Supreme Court of Appeals held that a defendant could be liable for punitive damages even if the jury did not award the plaintiff *any* compensatory damages. Indeed, in *Shulman v. Hunderfund*, a New York defamation case discussed later in this paper, the jury found the defendant liable and awarded \$100,000 in punitives but gave nothing for compensatory damages. See *Shulman v. Hunderfund*, 852 N.Y.S.2d 178, 180 (N.Y. App. Div. 2008) *rev'd* 905 N.E.2d 1159 (N.Y. 2009).

2010]

PUNITIVE DAMAGES IN STATE COURTS IN 2005: A NEW AUDIT

865

Animal Attack	6	6	100%	0	0%
Conversion	12	6	50%	4	33%
False Arrest /Imprisonment	4	0	0%	0	0%
Other Negligence	13	7	54%	4	31%
Fraud	71	54	76%	26	37%
Seller Plaintiff (Contract)	18	13	72%	3	17%
Buyer Plaintiff (Contract)	45	31	69%	12	27%
Mortgage Foreclosure	1	1	100%	0	0%
Employment (Discrimination)	42	25	60%	5	12%
Employment (Other)	34	19	56%	11	32%
Rental/Lease Agreement	9	6	67%	2	22%
Intentional/Tortious Interference	18	11	61%	5	28%
Partnership Dispute	7	6	86%	3	43%
Other/Unknown Contract	11	8	73%	4	36%
Subrogation	2	2	100%	1	50%
Eminent Domain/Condemnation	0	0	--	--	--
Title or Boundary Dispute	8	0	--	2	25%
Other/Unknown Real Property	3	0	--	--	0%
TOTAL /MEAN PERCENTAGE	567	330	58%	131	23%

As Table 2 shows, a party's request for punitive damages is generally associated with prevailing on liability for compensatory negligence, but is not a guarantee of winning. Columns three and four of Table 2 present, by cause of action, the frequency with which cases involving punitive damages claims resulted in a party prevailing on liability for general compensatory negligence. The only category in which claims for punitive damages always resulted in a compensatory win for the plaintiff were cases involving animal attacks and mortgage foreclosures. The number of such cases was very small, however, (six and one, respectively) and none of the cases involving animal attacks or mortgage foreclosures resulted in large punitive damage awards. Overall, the chance of prevailing on a compensatory negligence claim if punitive damages

were requested was 58%, but, again, the outcome varied by cause of action. In short, requesting punitive damages in pleadings was no guarantee that a party would prevail even on the general compensatory negligence claim.

The last two columns in Table 2 report the number of instances in which the plaintiff prevailed on the punitive damages claim after prevailing on compensatory liability. The last row in Table 2 shows that, of the 567 instances in which a party requested punitive damages, such damages were awarded 131 times, or in 23% of trials. However, if we examine the rate of success in punitive damages awards by the type of claim, we again find considerable variability. In particular, despite assertions about the dangers posed by product liability cases mentioned in the introduction to this article, there was only one instance of a punitive damage award in product liability cases in the 2005 survey and that involved an asbestos claim. There were no punitive damages awarded in non-asbestos product liability cases. There was only one punitive damage award among the premises liability cases. In contrast, parties requesting punitive damages in slander and defamation cases—some of which, as we will see, appear to arise out of business disputes—prevailed half of the time. In intentional torts and partnership dispute cases where the plaintiff or defendant requested punitive damages, the jury awarded those damages 43% of the time. In short, these data contradict the images fostered by tort reform groups that juries side with individuals suing businesses and provide large punitive damage awards. Rather, the beneficiaries of punitive damages are often business plaintiffs suing business defendants.⁴⁸

C. Variables Associated with Failure to Obtain Punitive Damages

The BJS data show only whether the pleadings indicated that punitive damages were requested. The data, however, do not give further information bearing on what occurred after the parties requested punitive damages. Yet, as Table 2 indicates, asking for punitive damages by no means guarantees that a jury will award compensatory or punitive damages. Indeed, the success rates were quite low for most causes of action. One explanation for these low success rates, as indicated in Table 2, was that the party did not succeed on the claim of compensatory damages.⁴⁹

While we will discuss the Westlaw jury report data in detail in the next section, it is worthwhile digressing to those data here because they provide additional insights about Table 2, specifically, the procedural processes bearing on the failure of plaintiffs to recover punitive damages.⁵⁰ Many states have

48. See VALERIE P. HANS, *BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY* (2000) (discussing jury attitudes toward business defendants).

49. Looking at the rates of prevailing on liability, plaintiffs are as likely to prevail on liability whether they ask for punitive damages or not.

50. We caution, again, that the Westlaw data are neither comprehensive nor a random sample of cases. Furthermore, the record of procedural details is often incomplete and thus cannot provide reliable estimates of

engaged in limiting punitive damages awards by either requiring “clear and convincing evidence” or by limiting the pleading of punitive damages to a separate stage only after a plaintiff succeeds in winning compensatory damages. Rustad’s *Iron Cage* outlines, in detail, the procedural limitations on punitive damages in each state.⁵¹ We focus on the six primary paths that result in the non-award of a plaintiff’s punitive damages claim during the trial.

1. *The trial judge refused the plaintiff the opportunity to plead punitive damages before the trial began.*

In *Pena v. Ford Motor Co.*,⁵² a product liability case, the defendants received partial summary judgment on the punitive damages claim before the trial started. A Missouri case, *Locke v. Suntrup Hyundai Inc.*⁵³ involved a sales tax dispute over the purchase of an automobile; the judge denied a claim for punitive damages. In *Nolan v. Myerly*,⁵⁴ an animal attack case, the defendant was granted summary judgment before the trial began. We suspect, but cannot prove from the present data, that this is the most frequent cause of failure to win on an initial punitive damages claim. In most jurisdictions, the plaintiff must demonstrate willful, wanton, or malicious behavior, and judges appear to be exercising their statutory or common law discretion in pre-trial proceedings.⁵⁵

2. *The plaintiff decided, for whatever reason, not to plead for punitive damages at the start or end of the trial.*

In *Tual v. Blake*,⁵⁶ the plaintiff initially asked for but then did not press for punitive damages in an intentional tort case.

3. *The plaintiff did not prevail on compensatory liability.*

As already noted, Table 2 indicates that failure to prevail on compensatory damages accounted for a substantial number of cases in which punitive damages were sought. Table 2 also shows that the success rates in obtaining punitive damages varied substantially by case type. Generally, regardless of the type of case, asking for punitive damages is not a good predictor of success in obtaining compensatory damages.

the actual frequencies of the various procedural events. However, despite these shortcomings, the data yield important information bearing on why litigants who request punitive damages in the pleadings often fail to receive them.

51. See generally Rustad, *supra* note 5, at 1299 (noting “far-reaching procedural safeguards” constraining punitive damages). Rustad surveys the standards and limits on punitive damages in all 51 United States jurisdictions in his article. See Rustad, *supra* note 5, at 1370-1417 (surveying all states and D.C.)

52. No. CV2002-022937, 2005 WL 3288763 (Ariz. Super. Ct. Aug. 26, 2005) (verdict summary) (assessing costs for defendant automobile maker).

53. No. 04CC-003604, 2005 WL 4858939 (Mo. Cir. Ct. Oct. 12, 2005) (verdict summary) (awarding \$936 to plaintiff for amount sales tax on claim of misrepresentation of contract).

54. No. RIC359499, 2005 WL 4880604 (Cal. Super. Ct. June 17, 2005) (verdict summary) (awarding \$207,600 for plaintiff).

55. See Rustad, *supra* note 5, at 1327 (describing different jurisdictions’ approaches to punitive damages).

56. No. EC034380, 2005 WL 3677180 (Cal. Super. Ct. Nov. 18, 2005) (verdict summary) (awarding \$30,000,000 in damages).

4. *The judge deferred the decision on punitive damages until the end of the trial, but then ruled against instructing the jury that they could consider punitive damages or, alternatively, allowed the pleading but subsequently remitted the award.*

*Leon v. Billings*⁵⁷ involved a medical malpractice claim accompanied by a claim of battery. The judge allowed the plea and argument of punitive damages but then entered a directed verdict against punitive damages at the close of the plaintiff's case.⁵⁸ In *Tummillo v. Gallagher*,⁵⁹ plaintiff condominium buyers sued the sellers for fraud, alleging that the sellers failed to disclose the full extent of water damage to the condo. The jury awarded \$5000 in punitive damages, but nothing for compensatory damages and the trial judge then remitted the entire punitive award.

5. *The jury awarded compensatory damages but refused to award punitive damages.*

In *Ameri v. Bouzari*,⁶⁰ a business dispute involving charges of fraud, the jury found punitive negligence on the part of both the plaintiff and defendant and consequently awarded no punitive damages to either party. *Cappa v. CrossTest Inc.*⁶¹ involved an employment claim in which there was a nonsuit on the plaintiff's claim; the jury found for the cross-complainant on a counterclaim, including a finding of malice, but awarded no punitive damages. *Hall-Edwards v. Ford Motor Co.*⁶² involved a product liability claim. The jury found that Ford placed a vehicle on the market with a defect relating to its stability and handling, which was a legal cause of the accident, but no punitive damages were awarded.⁶³

6. *The opposing parties reached a private settlement on punitive damages before or during the trial, thus preempting the jury from hearing the punitive damages claim.*

In *Wetherow v. Omm, Inc.*,⁶⁴ a negligence claim involving a construction death, the parties privately settled the claim for punitive damages, but the negligence claim went to the jury and resulted in nearly \$7,000,000 in

57. No. CI002-2769 Div. 33, 2005 WL 3626816 (Fla. Cir. Ct. Aug. 18, 2005) (verdict summary) (awarding \$1,250,000 in damages).

58. *See id.* (reciting facts).

59. No. 02 L 844, 2005 WL 3941260 (Ill. Cir. Ct. Sept. 29, 2005) (verdict summary) (noting verdict of \$5000 reduced to \$0 by judge order).

60. No. CV2004-006498, 2005 WL 3728776 (Ariz. Super. Ct. Oct. 19, 2005) (verdict summary) (noting mixed verdict, no damages on any count).

61. No. CIV 440552, 2005 WL 4708227 (Cal. Super. Ct. Dec. 19, 2005) (verdict summary) (indicating jury elected not to award punitive damages despite finding of malice).

62. No. 99-9450CA 22, 2005 WL 3999843 (Fla. Cir. Ct. Nov. 15, 2005) (verdict summary) (noting jury awarded plaintiff \$61,200,000).

63. *See id.*

64. No. 02-09668 Div. E, 2005 WL 3030126 (Fla. Cir. Ct. July 23, 2005) (verdict summary) (noting award of \$6,887,000 on negligence claim).

compensatory damages. In *Meuser v. Weaver*,⁶⁵ a motor vehicle lawsuit, the parties stipulated to \$100,000 in punitive damages in a pre-trial agreement. In *Williams v. Renaissance at Hillside Inc.*,⁶⁶ an Illinois case involving claims that nursing home negligence led to bedsores and required a ventilator for the patient over a period of two years, the defendant settled for \$2,800,000 shortly after the trial judge ruled that the jury could hear any claims relating to punitive damages.

Finally, attention should be given to the fact that, as already mentioned above, in some cases (especially involving financial disputes), the punitive damages claims were made in counterclaims by defendants. This significantly clouds the picture of who receives punitive damages. In a few instances, the plaintiff asked for punitive damages and the defendant, in a countersuit, asked for punitive damages. In other cases, while the plaintiff did not request punitive damages, the defendant pled for punitive damages.

D. Size and Ratios of Punitive Damages to Compensatory Damages by Type of Case

We turn now to the central concerns of the Supreme Court about the overall size of awards, the ratio of punitive to compensatory damages, and the relationship of case characteristics to the ratio of punitive to compensatory damages. We examine this problem from several directions. First, we consider the Supreme Court's assertion in *BMW* and later in *State Farm* that harms involving financial injury are usually less deserving of high punitive to compensatory damage ratios than harms involving personal injuries. In theory, it would be important to examine each of the individual BJS categories set out in Tables 1 and 2, but doing so would not allow meaningful comparisons because of the small number of cases in most of the categories. However, the BJS database combines the individual categories into four general categories of claims: personal injury torts, financial injury torts, employment related claims and claims related to property. We utilize this same categorization system as the first part of our exploration of the relationship of punitive to compensatory awards. Table 3 reports the punitive to compensatory relationships on a number of statistical dimensions.

65. No. CIV223098, 2005 WL 5266836 (Cal. Super. Ct. Mar. 2, 2005) (verdict summary) (indicating stipulated punitive award of \$100,000).

66. No. 02-1-002286, 2005 WL 3054475 (Ill. Cir. Ct. Oct. 19, 2005) (verdict summary) (summarizing \$2,800,000 award).

TABLE 3: PUNITIVE AND COMPENSATORY DAMAGES, BY CASE TYPE

VARIABLE	PERSONAL INJURY TORT	FINANCIAL INJURY TORT	EMPLOYMENT	PROPERTY
Number Asking for Punitive Damages	281	152	76	58
Percent Asking for Punitive Damages	6%	16%	32%	22%
Number Winning Punitive Damages	53	45	16	17
Percent Winning Punitive Damages	19%	30%	21%	29%
Mean Compensatory Damages When Punitive Damages Were Awarded	\$2,250,987	\$2,882,828	\$4,425,398	\$2,381,849
Model Compensatory Damages if Punitive Damages Were Awarded	\$118,000	\$125,000	\$305,954	\$185,105
Mean Punitive Damages if Punitive Damages Were Awarded	\$2,175,978	\$2,196,750	\$8,327,674	\$4,156,070
Model Punitive Damages if Punitive Damages Were Awarded	\$100,000	\$150,000	\$345,000	\$800,000
Mean Punitive: Compensatory Ratio	5:2	3:1	11:6	19:4
Median Punitive: Compensatory Ratio	1:1	1:1	1:1	4:3

We first look at the percent of cases where punitive damages were requested, and the rates at which they were awarded. As Table 3 shows, personal injury torts had the fewest requests for punitive damages (6%) and the lowest success rate (19%). Litigants in financial injury cases requested punitive damages 16% of the time and prevailed on the request 30% of the time. Employment-related claims requested punitive damages about one-third of the time (32% of cases), but the requesting litigant prevailed in only about one case of five (21%). Litigants in property cases requested punitive damages in 22% of cases and prevailed 29% of the time.

Table 3 also shows that the mean compensatory award in all four types of cases exceeded \$2,000,000, but claims involving employment were nearly twice as large as the other three categories. This possibly reflects the fact that many employment-related claims involved multiple plaintiffs, including class actions. However, the modal compensatory awards were in the lower hundreds of thousands for all four case types. In short, the differences between mean and modal awards suggest substantial variation in the underlying compensatory negligence claims. Looking at the average and modal punitive awards, Table 3 shows that employment cases had the highest mean and modal punitive awards among the four case types. Examining the ratio between compensatory and

punitive damages, we see that the mean ratio varied across case types. However, the last row of Table 2 shows that the median ratio for three of the case types was 1:1, with the median for property cases slightly above, at 4:3.

There are alternative ways to look at the data that may be more illuminating. For instance, Table 4 presents data regarding the number of cases resulting in punitive to compensatory ratios exceeding a single digit (10:1 or higher).⁶⁷

TABLE 4: THE RATIO OF COMPENSATORY AND PUNITIVE DAMAGES

COMPENSATORY AWARD	NUMBER OF CASES	MEAN PUNITIVE TO COMPENSATORY RATIO	NUMBER OF CASES WITH RATIOS > 9:1
\$0-999	6	Undefined	4
\$1k-9,999	16	5.3:1	5
\$10k-99,999	33	4.2:1	4
\$100k-999,999	42	1.8:1	0
\$1M-9,999,999	26	2.4:1	1
\$10M or Greater	8	1.0:1	0
TOTAL	131		14

Table 4 shows that *only 14* of the 131 cases resulting in a punitive damages award had ratios exceeding a single digit. These figures, however, need further clarification.⁶⁸

E. Punitive Damages Ratios in Cases with Small Compensatory Damages

The data in Tables 3 and 4 provide enough information to compile a basic profile of punitive to compensatory damage ratios. However, as Table 3 shows, dramatically different conclusions can be drawn from the data, depending on whether the summary statistic is the mean or the median award. At some level summary statistics cannot fully address concerns expressed in the various Supreme Court decisions about the uncertainty of punitive damages or the appropriateness of the ratios between punitive and compensatory damages. As we reviewed in the introduction to this article, the Supreme Court has recognized that there are classes of awards where compensable injury will

67. See generally Eisenberg, *supra* note 28 (stratifying cases by the amount of money awarded in compensatory damages). Eisenberg found that in the BJS 1992, 1996 and 2000 samples the highest punitive to compensatory ratios involved cases in which compensatory awards were under \$10,000. *Id.* at 15-16.

68. The low number of cases with a ratio exceeding the Supreme Court's specification of single digits can also be weighted even lower; all of the cases with a punitive damage award and a compensatory award of less than \$1000 (the first row of Table 4) have no compensatory damage award, meaning that the ratio between punitive and compensatory damages is incalculable.

be modest (or nil) but the behavior is judged to be highly reprehensible. *Shulman v. Hunderfund*,⁶⁹ was a defamation case in which the jury awarded punitive damages for \$100,000, but gave no award for compensatory damages. The BJS database limits our insights about punitive damages cases decided by juries because it lacks substantive details about the cases. Therefore, we now turn to our database constructed from Westlaw, emphasizing both qualitative and quantitative data.⁷⁰

IV. PUNITIVE DAMAGES: A QUANTITATIVE AND QUALITATIVE ANALYSIS BY SELECTED STATES

As we just discussed, some cases (such as *Shulman v. Hunderfund*) appear to demonstrate exceptions to the single-digit standard. Thus, while the BJS quantitative information provides us with representative general patterns, we argue that a qualitative analysis will help to place the jury verdicts in factual context.⁷¹ In the discussion that follows, we focus on punitive to compensatory ratios that exceed the single-digit standard, but in a few instances also draw attention to some very large punitive awards even when the punitive to compensatory ratios were nevertheless below a single digit.

A. Arizona

A search of Arizona's jury verdict reports revealed forty-five cases in which a party requested punitive damages. However, only three cases resulted in punitive damages, one of which exceeded the single-digit ratio. Appendix A shows that Arizona's standard for punitive damages requires that the defendant engage in behavior that involves a substantial risk of harm, for both general and specific deterrence, or behavior that constitutes "outrageous conduct."⁷² *Burden v. May*⁷³ involved an intentional tort claim by an off-duty police officer, still in uniform, who alleged that he had been assaulted in a bar by a hockey player. The jury awarded the plaintiff \$1570 in compensatory damages and \$25,000 in punitive damages, yielding a punitive to compensatory ratio of 16:1.⁷⁴ While this case exceeds the Supreme Court's suggested ratio of 9:1, the actual size of the awards (\$1570 and \$25,000) are far lower than the "runaway" punitive damage awards that legislators and lobbyists point out when

69. 905 N.E.2d 1159 (N.Y. 2009).

70. The complete data from the Westlaw research is available upon request from the authors.

71. Keep in mind that, unlike the BJS data, the cases are not a random sample and are almost certainly weighted toward plaintiffs emerging as winners, often with large awards.

72. See *Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073, 1080 (Ariz. 1987) (noting punitive damages available when plaintiff proves defendant acted with "evil mind"); *Smith v. Chapman*, 564 P.2d 900, 903 (Ariz. 1977) (indicating punitive damages available in Arizona for outrageous conduct or reckless indifference). See generally RESTATEMENT (FIRST) OF TORTS § 908, cmt. b (1939).

73. No. 1 CA-CV 06-0486, 2007 WL 5447050 (Ariz. Ct. App. Dec. 4, 2007)

74. See *id.* at 1-2 (reciting facts).

advocating for changes to the tort system.⁷⁵

B. California

The Westlaw search of verdict reports yielded eighty-six trials in which one of the litigating parties requested punitive damages in the pleadings, but only forty-one of the cases involved punitive damages claims at trial.⁷⁶ Some of these trials overlapped with the BJS cases. Fourteen of the cases involved punitive ratios of 1:1 or less; eleven had ratios of 2:1 or less; five had ratios of 4:1 or less; six had ratios of less than 10:1; and five cases exceeded the Supreme Court's single-digit guideline.

The largest punitive to compensatory ratio was in *iTech Group Inc. v. National Semiconductor*.⁷⁷ The case involved a commercial dispute in which the economic loss was \$234,358 and the punitive award was over \$15,000,000, resulting in a ratio of 64:1. iTech was a start-up company that alleged breach of contract by National Semiconductor under the parties' software licensing agreement and fraud for misstatements National made relative to its stated intent to provide source code software to iTech.⁷⁸ In certain ways, *iTech* is similar to *TXO*, in which the Supreme Court allowed an extremely large punitive to compensatory ratio in a business dispute. Both *iTech* and *TXO* illustrate again that many of the large punitive damage awards are in cases that involve a business-to-business dispute; these cases are often ignored by those seeking to reform or limit punitive damages by focusing on consumers suing businesses.

A second case demonstrates the use of punitive damages as a method of punishing behavior that society views as reprehensible. In *Goddard v. Holy Cross Catholic Cemetery*,⁷⁹ a cemetery lost cremated remains (called cremains) and conspired not to report the loss to the deceased's family while still selling the plaintiffs a headstone for the grave. The jury awarded \$12,113 in actual damages and \$400,000 in punitives, yielding a ratio of 33:1.⁸⁰ *Goddard* is a case where the ability of the jury to award a large punitive damage was limited by the cost of the product, in this case \$12,113, which is a small amount. To express the reprehensibility of the action, the jury rendered a large punitive

75. See Engle *Verdict Defies Common Sense, Florida Law; Philip Morris Says Court Created Runaway Jury*, BUSINESS WIRE, July 14, 2000 available at <http://www.allbusiness.com/legal/trial-procedure-jury-trial/6470981-1.html> (discussing \$145 billion jury verdict).

76. See CAL. CIV. CODE § 3294(a) (2010). Compared to Arizona's standard, California's standard for punitive damages is more liberal, allowing for punitive damages when the defendant engages in oppression, fraud, or malice. *Id.*

77. No. 1-02-CV-810872, 2005 WL 3974505 (Cal. Super. Ct. May 27, 2005) (verdict summary) (awarding \$15,234,358 in punitive damages).

78. See *id.* (reciting facts).

79. No. GIC833693, 2005 WL 2297579 (Cal. Super. Ct. Sept. 1, 2005) (verdict summary) (noting verdict award of \$412,113).

80. See *id.*

award. *Goddard* is a single example of a wide set of cases in California (and a long history of tort cases) involving issues of desecrating dead bodies.⁸¹

In *Radosevich v. Amco Insurance Co.*,⁸² a homeowner sued Amco for bad faith denial of coverage after an Amco adjustor asserted that a water leak in her home was a pre-existing long term leak; the plaintiff produced counter-evidence.⁸³ The jury awarded \$88,830 in compensatory damages and \$1,500,000 in punitive damages, resulting in a ratio of 17:1.⁸⁴ *Griffin Dewatering Corp. v. Northern Insurance Co. of New York*⁸⁵ involved another insurance claim. The plaintiff alleged the insurer failed to defend the policyholder against a claim.⁸⁶ The jury awarded \$1,061,188 in compensatory damages and \$10,000,000 in punitive damages for a ratio of approximately 10:1.⁸⁷

*Morris v. Western Convalescent*⁸⁸ was a lawsuit following allegations of abuse and neglect of a patient in a nursing facility who underwent a leg amputation. The jury awarded \$830,108 in compensatory damages and \$12,000,000 in punitive damages for a ratio approaching 15:1.⁸⁹

Other cases that yielded large ratios just short of the single-digit guideline apparently took damage to reputation into account. For example, in *O'Lee v. Compuware Corp.*,⁹⁰ a wrongful termination and defamation suit, Compuware fired several employees for running a side business with a contractor and falsifying invoices for personal gain, among other reasons, and the employees filed a wrongful termination and defamation suit.⁹¹ The jury found that Compuware falsified evidence relating to the firings and awarded the plaintiffs \$1,150,000 in compensatory damages and \$10,000,000 in punitive damages, yielding a ratio just short of 9:1.⁹² *O'Lee* is consistent with claims that juries (and judges) often examine whether a defendant engaged in a cover-up of a

81. See *Christensen v. Superior Court*, 820 P.2d 181, 193, 202 (Cal. 1991) (ruling family members can sue cemeteries and crematories for negligent mishandling of decedent's remains). The court held, however, that family members must witness the conduct in question to establish intentional infliction of emotional distress. See *id.* See generally Alex W. Craigie, *Burial of a Tort: The California Supreme Court's Treatment of Tortious Mishandling of Remains in Christensen v. Superior Court*, 26 LOY. L.A. L. REV. 909 (1992-1993) (exploring background of tortious liability for mishandling human remains and examining *Christiansen* decision).

82. No. 2002076548, 2005 WL 4126683 (Cal. Super. Ct. Apr. 25, 2005) (verdict summary).

83. See *id.* (reciting facts).

84. See *id.* (indicating amount of award).

85. No. BC310030, 2005 WL 2297571 (Cal. Super. Ct. June 30, 2005) (verdict summary).

86. See *id.* (reciting facts).

87. See *id.* (noting value of damage award).

88. No. BC310030, 2005 WL 2297571 (Cal Super. Ct. June 30, 2005) (verdict summary).

89. See *id.* (indicating amount of award).

90. No. 406409, 2005 WL 2428694 (Cal. Super. Ct. July 7, 2005) (verdict summary).

91. See *id.* (reciting facts). Compuware alleged that the employees were running a side business with a contractor and without Compuware's knowledge; that they had falsified invoices for personal gain and conspired with a contractor, and had an illicit and undisclosed relationship. See *id.*

92. See *id.* (noting damage award).

problem and whether the plaintiff can provide a “smoking gun,” or other explicit evidence of the cover-up. For example, in *Mathias v. Accor Economy Lodging*,⁹³ Judge Posner upheld a ratio of punitive to compensatory damages of 37.2:1.⁹⁴ In doing so, Judge Posner argued evidence that the defendant repeatedly engaged in the behavior—and attempted to cover up the behavior when confronted—provided the court with the ability to hand out a large punitive damage award.⁹⁵

In *Hettick v. FedEx Corp.*,⁹⁶ a sexual harassment case, two plaintiffs were awarded \$328,000 in compensatory damages and \$2,000,000 in punitive damages, resulting in a 6:1 ratio. The female plaintiff alleged that her FedEx coworker developed an obsessive crush on her, alleging that his behavior had become so stalker-like over a three-year period that she hid from him at work.⁹⁷ According to her testimony, she made many verbal and written complaints to managers, but management never took corrective action. Another plaintiff in *Hettick* alleged that the same coworker had also sexually harassed her with comments and intimidating behavior.⁹⁸ Both plaintiffs alleged that FedEx management failed to take sufficient steps to prevent the harassment and that a manager ratified the oppressive and malicious behavior of the perpetrator, thus entitling them to punitive damages. In defense, FedEx contended that plaintiffs and the alleged perpetrator were friends; that the conduct of the coworker was not pervasive, oppressive, or malicious; and that it did not view the contact between them as sexual harassment, or at least it did not have knowledge of conduct that amounted to sexual harassment. Additionally, FedEx contended that sufficient corrective action had been taken. FedEx also contended that its managing director was not a “managing agent” for purposes of punitive damages.⁹⁹ The jury, siding with the plaintiffs, found sufficient evidence of behavior that fit California’s requirements for punitive damages (pervasive, oppressive, and malicious behavior), and awarded punitive damages.

Several other California cases merit description because of the magnitude of the punitive damages award even though the punitive to compensatory ratios were modest in size. *Savaglio v. Wal-Mart Stores Inc.*¹⁰⁰ was a class action suit involving 115,919 California hourly workers in Wal-Mart and Sam’s Clubs. The workers alleged that Wal-Mart systematically refused to give them meal breaks as required by California law. Evidence from time cards revealed

93. 347 F.3d 672 (7th Cir. 2003).

94. *Id.* at 674, 678.

95. Posner also argues that a case where a large compensatory award is impossible may result in a large ratio, as well as behavior that cannot be addressed by criminal torts.

96. No. 103CV010014, 2005 WL 491167 (Cal Super. Ct. Feb. 1, 2005) (verdict summary).

97. *See id.* (reciting facts).

98. *See id.*

99. *See id.* (indicating FedEx defense).

100. No. C8356877, 2005 WL 3804468 (Cal. Super Ct. Dec. 22, 2005) (verdict summary). *Savaglio* is also in the BJS database.

8,100,000 violations between January 2001 and May 2006.¹⁰¹ The plaintiffs contended that Wal-Mart knew of these violations but took steps to conceal them.¹⁰² The jury awarded compensatory damages of \$66,131,858 and punitive damages of \$115,000,000, resulting in a punitive to compensatory ratio of 1.7:1.¹⁰³

*Lexar Media v. Toshiba Corp.*¹⁰⁴ was a business dispute involving claims of unfair competition, trade secrets, and breach of fiduciary duty. The jury awarded \$284,450,000 in compensatory damages and \$84,000,000 in punitive damages, yielding a ratio of .3:1.

*Baker v. PrivatAir Inc.*¹⁰⁵ involved a compensatory award of \$51,368,000 and a punitive award of \$10,000,000, yielding a ratio of 0.2:1. *Baker* involved an age discrimination claim against PrivatAir and a number of persons associated with the company. Baker, a sixty-three-year-old decorated pilot, was employed by PrivatAir for many years, and, after being accused of safety violations, was replaced with a younger pilot.¹⁰⁶ The jury found that the safety violations were false and that the younger pilot who replaced Baker was a friend of one of the persons involved in his dismissal.¹⁰⁷

C. Florida¹⁰⁸

Turning to Florida, thirty-two cases with requests for punitive damages appeared in our Westlaw database and thirteen resulted in punitive awards. Only one case exceeded the single digit ratio. In *Cabrera v. Eller Media Co.*,¹⁰⁹ a boy died from electrocution while taking cover in a Miami bus shelter. The victim's father alleged that the bus shelter owned by the defendant had faulty wiring because it was improperly installed, lacked fusing bonding, and had an incorrect transformer. Eller argued that lightning caused the boy's death, but at trial evidence was introduced that there was less than a 1% chance that lightning was the cause of the death.¹¹⁰ The jury awarded \$4,100,000 in compensatory damages and \$61,000,000 in punitive damages, producing a ratio of 15:1. This case is particularly interesting because the jury learned that Eller was worth \$458,000,000, and it is possible that the jury considered the defendant's financial worth when deciding punitive damages. Under Florida law the jury may consider the net worth of a defendant in determining the

101. *See id.* (reciting facts).

102. *See id.*

103. *See id.* (indicating damage award).

104. No. CV812458, 2005 WL 3729077 (Cal. Super. Ct. Mar. 23, 2005) (verdict summary).

105. No. BC322198, 2005 WL 3729059 (Cal Super. Ct. Dec. 13, 2005) (verdict summary).

106. *See id.* (reciting facts).

107. *See id.*

108. The American Tort Reform Association has routinely referred to Florida as a "judicial hell-hole." AMERICAN TORT REFORM FOUNDATION, JUDICIAL HELLHOLES (2009).

109. No. 98-23808 CA 05, 2005 WL 3030137 (Fla. Cir. Ct. June 24, 2005) (verdict summary).

110. *See id.* (reciting facts).

amount of punitive damages.¹¹¹ Many states, in contrast, forbid the use of wealth in assessing punitive damages.

D. Illinois

Illinois had only seven cases in Westlaw in 2005 that resulted in punitive awards, one of which, *Blount v. Stroud*,¹¹² produced a double-digit ratio. Defendant Stroud owned and served as general manager of Jovon Broadcasting Corp. Plaintiff Blount was an employee who had been promoted to local sales manager, which entailed supervising four account executives. She alleged that Stroud and Jovon contracted to pay her a 2.5% commission on all new business generated by her account executives, but she claimed she never received the commission.¹¹³ She sued, alleging failure to pay commissions, in violation of her contract. Additionally, she claimed retaliatory termination on the grounds that she had refused to agree to commit perjury in connection with a coworker's discrimination lawsuit, seeking punitive damages in connection therewith as well as on the grounds that Stroud made several defamatory statements about her to third parties during her employment and after she was terminated.¹¹⁴ Stroud and Jovon denied contracting to pay the plaintiff's commissions, attempting to coerce her to commit perjury, or making defamatory comments. The defense also filed two counterclaims alleging breach of duty and unjust enrichment for accepting a consulting fee for services that were never performed. The jury awarded the plaintiff back pay for the employment termination and damages for physical and emotional suffering amounting to \$282,350 in compensatory damages, and rendered the \$2,800,000 punitive award in relation to the retaliation claim, a ratio of 10:1. However, the jury did not find for the plaintiff on the claims of defamation or intentional infliction of emotional distress.¹¹⁵

E. Missouri

Missouri had twelve punitive damages awards reported in 2005 but only two exceeded the single-digit ratio. In *Hampton v. State Farm Mutual Automobile*

111. See *Bankers Multiple Line Ins. Co. v. Farish*, 464 So.2d 530, 533 (Fla. 1985) (emphasizing defendant's net worth one factor to consider when determining punitive damages).

112. No. 01 L 2330, 2005 WL 4001082 (Ill. Cir. Ct. Nov. 21, 2005) (verdict summary).

113. See *id.* (reciting facts).

114. See *id.* Other claims included wrongful termination in violation of Illinois public policy, intentional interference with business expectancy with a prospective business partner and Blount's subsequent employer, as well as conduct involving intention of inflicting emotional distress. *Id.*

115. Compare *Jablonski v. Ford Motor Co.*, No. 5-05-0723, 2010 WL 378525 (Ill. App. Ct. Feb. 1, 2010) (verdict summary). After another motorist rear ended Dora Jablonski's Lincoln Town Car and caused the gas tank to explode, she suffered burns to her head, face, ears, nose, shoulders, chest, arms, hands, legs, ankles and feet. Her husband died of thermal burns and inhalation injury. The jury awarded \$28,167,715 in compensatory damages and \$15,000,000 in punitive damages, yielding a punitive to compensatory ratio of 0.5:1. See *id.*

Insurance Co.,¹¹⁶ the plaintiff purchased a vehicle that was later stolen and found burned. Hampton filed a claim for replacement but State Farm, alleging fraud, denied the claim and forced criminal charges against Hampton and a codefendant. After acquittal, the defendants filed suit against State Farm alleging malicious prosecution, the tort of outrage, abuse of process, and contract fraud. The case resulted in a compensatory award of \$10,300 and a punitive award of \$800,000, yielding a ratio of 78:1.¹¹⁷

*Smith v. Brown & Williamson Tobacco Corp.*¹¹⁸ resulted in a compensatory award of \$2,000,000 and a punitive award of \$20,000,000, a ratio of 10:1 in favor of a smoker of Kool cigarettes who died of cancer. The jury found that the defendant was only 25% liable, which reduced the compensatory award to \$500,000, but the punitive award stood.¹¹⁹

F. New Jersey

New Jersey had only three reported punitive damages awards, one of which reached a ratio of 1.2:1. In *Verni v. Lanzaro*,¹²⁰ the plaintiff sued both the driver of a vehicle and the concession provider at a major sporting arena in connection with a drunk-driving collision that resulted in the death of another person and a severe disability for plaintiff Verni. Verni alleged that the driver, while spending the afternoon at a professional football game, drank alcohol at a concession stand operated by Aramark and was permitted to drive away from the stadium despite his obvious intoxication.¹²¹ The jury awarded \$60,450,000 in compensatory damages and \$75,000,000 in punitive damages.¹²² *Verni* is an example of one of the few exceptions to the cap on punitive damages—in this case, drunk driving—that is part of the New Jersey punitive damages statute.

G. New York

New York only had five punitive damages awards reported in the Westlaw database, none of which exceeded the single-digit ratio. The largest ratio was *Rose v. Brown & Williamson Tobacco Corp.*,¹²³ involving a \$3,420,000 compensatory award and a \$17,100,000 punitive award, a ratio of 5:1. The punitive award was leveled at Brown & Williamson as successor-in-interest to Philip Morris on the finding that it disregarded technology that would have allowed production of safer cigarettes, and intentionally marketed addictive

116. No. 02-CV-211426, 2005 WL 3636236 (Mo. Cir. Ct. Sept. 26, 2005) (verdict summary).

117. *See id.* (noting amount of damage award).

118. No. 03CV212922, 2005 WL 3505692 (Mo. Cir. Ct. Feb. 3, 2005) (verdict summary).

119. *See id.* (discussing result).

120. No. BER-L-10488-00, 2005 WL 427792 (N.J. Super. Ct. Jan. 18, 2005) (verdict summary).

121. *See id.* (reciting facts).

122. *See id.* (noting amount of damage award).

123. No. 101996/02, 2005 WL 1817523 (N.Y. Sup. Ct. Mar. 28, 2005) (verdict summary).

cigarettes.¹²⁴

H. Pennsylvania

Pennsylvania had only three reported punitive awards, none of which exceeded a single-digit ratio. In *Fromm v. Hershey Medical Center*,¹²⁵ the jury awarded the estate of a cardiac patient \$168,400 in compensatory damages and \$1,000,000 in punitive damages, a ratio of 6:1. *Fromm* involved wrongful death and medical malpractice claims by the estate of a sixty-two-year-old man who was scheduled for cardiac surgery at Hershey Medical Center. Upon meeting with the patient, the hospital's financial counselor implied that it would not perform the surgery unless the patient could figure out a way to pay for it. The patient, upset by this, left without scheduling the surgery and before he could reschedule, suffered a heart attack and died. His estate sued, contending that the hospital denied care based on the patient's inability to pay. Additionally, the cardiologists were sued for medical malpractice on the grounds that they should have done more to ensure Boltz had the surgery. The hospital countered that the counselor never told Boltz that his surgery would not be scheduled until he could pay and that Boltz made the decision himself to leave the hospital. Boltz's estate asked for unspecified damages and also asked the jury to find that Hershey's conduct was outrageous, warranting punitive damages. The jury found the two cardiologists not liable but found Hersey hospital liable, and, citing intentional misconduct, awarded a large punitive award.¹²⁶

I. Texas

Texas had only six punitive damages awards in the 2005 Westlaw data, none of which involved a ratio that exceeded the single-digit guideline.

V. INSIGHTS ABOUT PROCESS AND LARGE RATIOS

The data from our constructed Westlaw database add important insights to the understanding of punitive damages. The BJS data indicate that pleadings involving punitive damages claims often do not result in punitive or compensatory damages. The Westlaw data take us further by providing a sketch of the procedural factors that constrain and control punitive damages. Most particularly, they strongly suggest that judicial gate-keeping prevents many routine claims from ever being put to the jury in the first place, as judges apply common law and statutes to eliminate inappropriate claims. The second

124. *See id.* (reciting facts).

125. Nos. 1270s-1999 and 2510s-1999, 2005 WL 1705460 (Pa. Ct. Com. Pl. June 16, 2005) (verdict summary).

126. *See id.*; 40 PA. CONS. STAT. § 1301.812-A(g) (setting range for punitive damages against physicians); Appendix A.

insight is that when ratios exceed the single-digit guideline enunciated by the U.S. Supreme Court, it is arguable that the degree of reprehensibility is no different from *TXO*, in which the Supreme Court approved a high ratio because of the reprehensibility of the defendant's behavior. The data also hint at nuances in jury decisions, similar to those noted by Vidmar and Rose, in that while rendering a punitive damage award, juries rejected other claims made by the plaintiff.¹²⁷

VI. CONCLUSION

In *Exxon Shipping v. Baker*, the Supreme Court acknowledged as empirical fact that there is no significant evidence of runaway punitive awards, that there had been no increase in awards over the past decades, and that the majority of punitive awards did not exceed a single digit ratio. Despite these findings, the Court continued to be concerned about the exceptions to its stated guideline, referring to their stark unpredictability.

The data in this article provide an update consistent with past empirical research. However, we took our research beyond the extant literature by providing a profile of who asks for and who receives punitive damages, and provided a tentative outline of the factors that prevent recovery, including the burden of proving malicious intent accompanied by judicial supervision of statutory guidelines on punitive damages.

A summary of the BJS data is helpful in putting the findings into perspective. The 2005 Civil Justice Survey indicates that for the forty-six courts, representative of the 75 largest county courts in the United States, there were 6427 civil jury trials, and of these punitive damages were requested in pleadings 567 times, or 8.8% of cases. In result, 131 trials involved the awarding of punitive damages—2% of all trials and 23% of cases in which the pleadings included a request for punitive damages. Of the punitive award verdicts, only 14 cases exceeded the single-digit ratio guideline that has concerned the Supreme Court. Additional research, using jury verdict reporters, produced very few (eleven) cases where the ratio of punitive to compensatory damages exceeded a single digit.

The Supreme Court has concluded, in the past, that the appropriateness of awards is a qualitative judgment. In *BMW*, the Court articulated the view that excessive punitive awards were acceptable when the ratio between punitive and compensatory damages was low, when the defendant's conduct was particularly reprehensible, and when alternative state sanctions for similar misconduct are unavailable. In examining the cases in the present article, the vast majority fit the first criterion: the ratio of punitive to compensatory

127. See generally Vidmar & Rose, *supra* note 32. It is worth noting that neither database tells us about post-verdict appeals and settlements of the awards. Such information would permit an even more complete picture of the impact of punitive awards on defendants.

damages is low. In the eleven cases in our Westlaw database with large punitive to compensatory ratios, there is often arguably clear evidence pointing to the reprehensibility of actions by the defendant. In *Goddard v. Holy Cross Catholic Cemetery*, the jury evaluated the effect of the loss of a decedent's remains and the conspiracy of the defendant in failing to report the loss to the plaintiff. In *Hampton v. State Farm Mutual Automobile Insurance Co.*, the jury considered the actions of the defendant (malicious prosecution, abuse of process, and contract fraud) reprehensible. Similar actions by insurance companies in *Radosevich v. Amco Insurance Co.* and *Griffin Dewatering Corp. v. Northern Insurance Co. of New York* also resulted in large punitive awards. In *Blount v. Stroud*, the jury awarded punitive damages after testimony indicating that the plaintiff was fired for refusing to perjure herself in a prior lawsuit against the defendant.

Other cases involved causes of action where there was not a clear substitute in state law. In *Hettick v. FedEx Corp.*, the failure to protect female employees from sexual harassment led to a large punitive award. In *Smith v. Brown & Williamson Tobacco Corp.* and *Rose v. Brown & Williamson Tobacco Corp.*, the plaintiffs were awarded large punitive damages in cases involving the actions of tobacco companies.

Consider again the Supreme Court's conclusion in *TXO*, approving a 526:1 punitive to compensatory damages ratio because the defendant engaged in "egregiously tortious conduct."¹²⁸ Our Westlaw data summaries of facts alleged in the trials resulting in verdicts exceeding the single digit guideline allows an arguable position that, like the Supreme Court in *TXO*, the juries found evidence that defendants had engaged in similar reprehensible behavior. We are left with a conclusion that empirical facts do not justify the Supreme Court's continuing concern about the unpredictability and the ratios associated with punitive damage awards.

128. *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 466 (1993).

APPENDIX: A FULL SURVEY OF LEGAL AND MONETARY LIMITS ON
PUNITIVE DAMAGES, BY STATE

State	Available? ¹²⁹	Legal Constraints on Punitive Damages ¹³⁰	\$ Cap? ¹³¹	Monetary Limits on Punitive Damages ¹³²
AL	Yes	Punitive damages are only available “where it is proven by clear and convincing evidence that the defendant consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.” ¹³³	Yes	Actual limits on punitive damages are three times compensatory damages or \$500,000, whichever is greater. ¹³⁴ Wrongful death or intentional infliction of physical injury cases have no caps.
AK	Yes	If the plaintiff demonstrates that the “defendant’s conduct (1) was outrageous, including acts done with malice or bad motives; or (2) evidenced reckless indifference to the interest of another person” the fact finder can apply punitive damages. ¹³⁵	Yes	Punitive damages cannot exceed three times compensatory damages or \$500,000. The limit may be raised to the greater of up to four times compensatory damages or aggregate financial gain (maximum \$7,000,000) if the defendant was “motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant.” ¹³⁶
AR	Yes	Punitive damages are only available if the defendant (1) was aware that conduct would result in “injury or damage and that he or she continued the conduct with malice or in reckless disregard of the	Yes	No more than the greater of \$250,000 or three times the amount of compensatory damages (maximum \$1,000,000). No cap is applied if defendant meant to cause the harm and did cause the harm. ¹³⁸

129. Are punitive damages available in the state?

130. What are the legal requirements, statutorily or by common law, governing the award of punitive damages?

131. Does the state have a cap in effect for punitive damages?

132. What are the monetary limits on punitive damages in the state?

133. ALA. CODE § 6-11-20(a) (2009).

134. See § 6-11-21. The cap is different if defendant is a small business (i.e., with a net worth of less than \$2,000,000). In such a case, the cap is \$50,000 or 10% of the business’s net worth. *Id.*

135. See ALASKA STAT. § 09.17.020(b)(1)-(2) (2009).

136. *Id.* § 09.17.020 (f), (g).

		consequences,” or (2) “intentionally pursued a course of conduct for the purpose of causing injury or damage.” ¹³⁷		
AZ	Yes	Punitive damages are available in Arizona if the defendant acted knowing that the course of conduct caused a substantial risk of harm, ¹³⁹ for both general and specific deterrence, ¹⁴⁰ and in cases of “outrageous conduct.” ¹⁴¹	No	The Arizona Constitution prohibits laws limiting amount of damages in personal injury and wrongful death cases: “No law shall be enacted . . . limiting the amount of damages to be recovered for causing the death or injury of any other person.” ¹⁴²
CO	Yes	Punitive damages are awarded in “circumstances of fraud, malice, or willful and wanton conduct.” ¹⁴³	Yes	Generally, punitive damages should not exceed compensatory damages, but the court may increase the punitive damages (to a maximum of three times the amount of actual damages) if the defendant has “continued the behavior,” “repeated the action,” or “further aggravated” the claimant’s damages through their “willful and wanton conduct.” ¹⁴⁴
CA	Yes	“In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that	No	

138. *Id.* § 16-55-208.

137. ARK. CODE ANN. § 16-55-206 (2009).

139. *Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073, 1080 (Ariz. 1987).

140. *See id.*

141. *Smith v. Chapman*, 564 P.2d 900, 903 (Ariz. 1977); *see also* RESTATEMENT (FIRST) OF TORTS, § 908, cmt. b (1939).

142. ARIZ. CONS. ART. 2, § 31 (2010); *see Smith v. Myers*, 887 P.2d 541, 544 (Ariz. 1994).

143. COLO. REV. STAT. § 13-21-102(1)(a) (2008).

144. *Id.* § 13-21-102 (1)(a)(3). Punitive damages are not allowed in any action against a health care professional that involves the approved use of drugs or clinically justified non-standard uses, within “prudent” health care standards, or written informed consent. *Id.* § 13-64-302.5(5) (2001) (limiting punitive damage awards against health care professionals).

		the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.” ¹⁴⁵		
CT	Yes	The single purpose of punitive damages in Connecticut is to compensate the plaintiff for legal expenses. ¹⁴⁶	Yes	Punitive damages are limited to the actual cost of the litigation, including attorney's fees. ¹⁴⁷ Punitive damages are capped at two times the compensatory damages in product liability cases and cases involving motor vehicle torts. ¹⁴⁸
DE	Yes	Punitive damages are available in medical malpractice cases if the defendant caused an injury that was “maliciously intended or was the result of willful or wanton misconduct.” ¹⁴⁹	No	
FL	Yes	The defendant’s conduct must be “intentional misconduct or gross negligence” ¹⁵⁰ for punitive damages; punitive damages are available even if compensatory damages are not awarded. ¹⁵¹	Yes	Punitive damages are capped unless the plaintiff demonstrates a specific intent to harm. The cap is the greater of three times compensatory damages or \$500,000, unless a supervisor ratified the behavior, in which case the cap is the greater of four times

145. CAL. CIV. CODE § 3294(a) (West 1997).

146. *See Berry v. Loiseau*, 614 A.2d 414, 433 (1992) (upholding limit on punitive damages). The Connecticut Supreme Court noted that a “longstanding rule in Connecticut limit[ed] common law punitive damages to a party’s litigation costs,” and declined to overturn the “well established rule governing punitive damages awards.” *See id.*

147. *See generally Freeman v. Alamo Mgmt. Co.*, 607 A.2d 370 (Conn. 1992).

148. *See* CONN. GEN. STAT. § 14-295, 52-240(b) (2005)

149. DEL. CODE ANN. tit. 18, § 6855 (1999).

150. FLA. STAT. ANN. § 768.72(2) (West 2005).

151. *See id.* § 768.72(2).

				compensatory damages or \$2,000,000. ¹⁵²
GA	Yes	Punitive damages are allowable if the defendant showed “willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.” ¹⁵³	Yes	Punitive damages may not exceed \$250,000, ¹⁵⁴ except in cases of product liability ¹⁵⁵ and “if it is found that the defendant acted, or failed to act, with the specific intent to cause harm, or that the defendant acted or failed to act while under the influence of alcohol, drugs other than lawfully prescribed,” ¹⁵⁶ where there is no cap.
HI	Yes	“The plaintiff must prove by clear and convincing evidence that the defendant has acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some willful misconduct or that entire want of care which would raise the presumption of a conscious indifference to consequences.” ¹⁵⁷	No general limit	In medical malpractice, there is a limit on noneconomic damages for physical pain and suffering of \$375,000. ¹⁵⁸
IA	Yes	Punitive damages are available if the defendant engaged in conduct that constituted a “willful and wanton disregard for the	No	

152. *See id.* §§ 768.725, 768.72(2).

153. GA. CODE ANN. § 51-12-5.1(b) (West 2005).

154. *Id.* § 51-12-5.1(g).

155. *Id.* § 51-12-5.1(e)(1).

156. *Id.* § 51-12-5.1(f).

157. *Masaki v. General Motors Corp.*, 780 P.2d 566, 579 (Haw. 1989)

158. *See HAW. REV. STAT. § 663-8.7* (2009) (enumerating tort actions exempt from \$375,000 cap, not including medical malpractice). *But see § 663-10.9(2)* (2009) (stating \$375,000 cap on damages for pain and suffering).

		rights and safety of another.” ¹⁵⁹		
ID	Yes	The plaintiff is required to show the defendant engaged in “oppressive, fraudulent, malicious or outrageous conduct” ¹⁶⁰		Punitive damages may not exceed the greater of \$250,000 or three times the compensatory damages. ¹⁶¹
IL	Yes	Punitive damages may be awarded if the defendant is shown to act “with evil motive or with a reckless and outrageous indifference to a highly unreasonable risk of harm and with a conscious indifference to the rights and safety of others.” ¹⁶²	No	
IN	Yes	Punitive damages may be awarded if the defendant “acted with the malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing.” ¹⁶³	Yes	Punitive damages may not exceed the greater of three times the compensatory award or \$50,000. ¹⁶⁴
KS	Yes	The plaintiff must demonstrate that the defendant “acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.” ¹⁶⁵	Yes	The punitive damages must not exceed the lesser of the defendant’s annual income, up to 50% of the net worth of the defendant, as determined by the court, or \$5,000,000. ¹⁶⁶ However, if the conduct of the

159. IOWA CODE ANN. § 668A.1(1)(a) (1998).

160. IDAHO CODE ANN. § 6-1604(1) (2004).

161. *Id.* § 6-1604(3) (2004).

162. 735 ILL. COMP. STAT. ANN 5/2-1115.05(b) (West 2009).

163. *Nelson v. Jimison*, 634 N.E.2d 509, 511 (Ind. Ct. App. 1994).

164. *See* IND. CODE ANN. § 34-51-3-4 (West 2009); *see also* USA Life One Ins. Co. of Ind. v. Nuckolls, 682 N.E.2d 534, 541 (Ind. 1997) (setting forth general requirements for recovery of punitive damages in Indiana).

165. KAN. STAT. ANN. § 60-3702(c) (2009).

166. *Id.* § 60-3702(e)

				defendant results in a profit that exceeds these caps, the cap is raised to "1 1/2 times the amount of profit which the defendant gained or is expected to gain as a result of the defendant's misconduct." ¹⁶⁷
KY	Yes	Punitive damages are available when the defendant acted with "oppression, fraud or malice." ¹⁶⁸	No	"The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property." ¹⁶⁹
LA	No	Punitive damages are prohibited by statute in Louisiana, yet there are exceptions for drunk driving, ¹⁷⁰ the unlawful interception of communications, ¹⁷¹ and for those engaged in housing discrimination in violation of the Open Housing Act. ¹⁷²	No	
MA	No	Punitive damages are prohibited by common law. ¹⁷³	No	
ME	Yes	"[I]n order to recover punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant acted with malice." ¹⁷⁴	No general limit	\$250,000 for wrongful death actions. ¹⁷⁵
MD	Yes	"The purpose of punitive damages is not only to	No general limit	In medical malpractice cases, the award of noneconomic

167. *Id.* § 60-3702(f).

168. KY. REV. STAT. ANN. § 411.184(2) (West 2009).

169. KY. CONST. § 54 (2009).

170. LA. CIV. CODE ANN. art 2315.4 (2009).

171. LA. REV. STAT. ANN. § 15:1312(A) (2009).

172. *Id.* § 51:2613(E).173. *See* *Caperci v. Huntoon*, 397 F.2d 799, 801 (1st Cir. 1968); *see also* Dorothea C. Cadiff et al., Note, *Punitive Tort Damages in New England*, 41 B.U. L. REV. 389, 390 (1961).174. *Tuttle v. Raymond*, 494 A.2d 1353, 1354 (Me. 1985).

175. 18 ME. REV. STAT. ANN. tit 18, § 2-804(b) (2009).

		punish the defendant for egregiously bad conduct toward the plaintiff, but also to deter the defendant and others contemplating similar behavior. ¹⁷⁶		damages is limited to \$500,000. There is a \$350,000 limit on noneconomic damages in personal injury actions. ¹⁷⁷
MI	Yes	In Michigan, punitive (or exemplary) damages are limited to "compensation for injury to feelings." ¹⁷⁸		"The purpose of exemplary damages is not to punish the defendant, but to render the plaintiff whole. When compensatory damages can make the injured party whole, exemplary damages must not be awarded." ¹⁷⁹
MN	Yes	The defendant must "show deliberate disregard for the rights and safety of others." ¹⁸⁰	No	
MO	Yes	"Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or reckless indifference to the rights of others." ¹⁸¹	No	
MS	Yes	The defendant must have acted with "actual malice, gross negligence which evidences a willful, wanton, or reckless disregard for the safety of	Yes	Punitive damages are capped, with the caps relating to the net worth of the defendant. If the defendant is worth more than \$1,000,000,000, the damages are capped at \$20,000,000. For

176. *Owens-Corning Fiberglas Corp. v. Garrett*, 682 A.2d 1143, 1161 (Md. 1996); *see also* *Bowden v. Caldor Inc.*, 710 A.2d 267, 276 (Md. 1998) (reaffirming punitive damages stated in *Garrett*); Stephen J. Shapiro, *Punitive Damages in Maryland: Reconciling Federal Law, State Law, and the Pattern Jury Instructions*, 38 U. BALT. L. REV. 27, 33 (2007) (noting purpose of punitive damages in Maryland as stated in *Garrett*).

177. *See* MD. CODE ANN., CTS. & JUD. PROC. § 11-108 (West 2004); *Murphy v. Edmonds*, 601 A.2d 102, 116 (Md. 1992) (upholding cap on personal injury actions).

178. *Jackson Printing Co., Inc. v. Mitran*, 425 N.W.2d 791, 794 (Mich. Ct. App. 1988); *see also* *Veselenak v Smith*, 327 N.W.2d 261, 264 (Mich. 1982).

179. *Jackson Printing Co., Inc.*, 425 N.W.2d at 794.

180. MINN. STAT. ANN § 549.20(1)(a) (2010).

181. RESTATEMENT (SECOND) OF TORTS § 908(2) (1979); *see also* *Altenhofen v. Fabricor, Inc.*, 81 S.W.3d 578, 590 (Mo. 2002) (citing *Burnett*); *Burnett v. Griffith*, 769 S.W.2d 780, 787 (Mo. 1989) (laying out Missouri's punitive damages standard).

		others” or committed actual fraud. ¹⁸²		a defendant worth more than \$750,000,000 but less than \$1,000,000,000, the cap is \$15,000,000. Defendants worth more than \$500,000,000 but less than \$750,000,000 cannot pay more than \$5,000,000. Those worth between \$100,000,000 and \$500,000,000 have a cap of \$3,750,000. A cap of \$2,500,000 is in place for those worth more than \$50,000,000 but less than \$100,000,000. All other cases have a cap of 2% of the defendant’s net worth. ¹⁸³
MT	Yes	Punitive damages can be awarded if the plaintiff demonstrates that the defendant is “guilty of actual fraud or actual malice.” ¹⁸⁴	Yes	Punitive damage awards may not exceed the lesser of \$10,000,000 or 3% of a defendant's net worth. ¹⁸⁵
NC	Yes	Punitive damages are available “to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts.” ¹⁸⁶	Yes	The punitive award may not exceed the greater of three times the compensatory award or \$250,000. ¹⁸⁷
ND	Yes	Exemplary damages may be awarded if the defendant is guilty of “oppression, fraud, or actual malice.” ¹⁸⁸	Yes	Punitive damages are capped at the greater of \$250,000 or two times the compensatory damages. ¹⁹⁰

182. MISS. CODE ANN. § 11-1-65(1)(a) (2009).

183. *Id.* § 11-1-65(3)(a)(i)-(vi).

184. MONT. CODE ANN. § 27-1-221(1) (2009).

185. *Id.* § 27-1-220(3). Actual malice exists “if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff.” *Id.* Furthermore, defendant must: “deliberately proceed[] to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or . . . deliberately proceed[] to act with indifference to the high probability of injury to the plaintiff.” *Id.* § 27-1-221(2). Actual fraud exists when a defendant: “makes a representation with knowledge of its falsity; or . . . conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.” *Id.* § 27-1-221(3).

186. N.C. GEN. STAT. § 1D-1 (2009).

187. *Id.* § 1D-25.

188. N.D. CENT. CODE ANN. § 32-03.2-11(1) (2009).

		Exemplary damages are awarded “for the sake of example and by way of punishing the defendant.” ¹⁸⁹		
NE	No	Prohibited by common law. “It has been a fundamental rule of law in this state that punitive, vindictive, or exemplary damages will not be allowed, and that the measure of recovery in all civil cases is compensation for the injury sustained.” ¹⁹¹	No	
NH	No	“No punitive damages shall be awarded in any action, unless otherwise provided by statute.” ¹⁹²	No	
NJ	Yes	Punitive damages are available if the “defendant’s acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.” ¹⁹³	Yes	The cap on punitive damages is the greater of five times the compensatory damages or \$350,000. ¹⁹⁴ Hate crimes, discrimination, AIDS testing disclosure, sex abuse, and drunk drivers are excluded from the cap. ¹⁹⁵

190. *Id.* § 32-03.2-11(4).

189. *Id.* § 32-03.2-11(1).

191. *See* *Abel v. Conover*, 104 N.W.2d 684, 688 (Neb. 1960) (calling prohibition on punitive damages “fundamental rule of law” in Nebraska); *see also* *Wilfong v. Omaha & Council Bluffs St. Ry. Co.*, 262 N.W. 537, 540 (Neb. 1935) (holding damages for torts limited to compensation for actual injury sustained); *Bee Pub. Co. v. World Pub. Co.*, 82 N.W. 28, 29 (Neb. 1900) (stating measure of recovery compensation for injury sustained); *Atkins v. Gladwish*, 41 N.W.347, 350 (Neb. 1889) (acknowledging rule limiting recovery to damage for injury sustained). *See generally* *Boyer v. Barr*, 8 Neb. 68 (Neb. 1878) (calling question of punitives “tabulraza”).

192. N.H. REV. STAT. ANN. § 507:16 (2010).

193. N.J. REV. STAT. ANN. § 2A:15-5.12(4)(a) (2009).

194. *See id.* § 2A:15-5.14.

195. *See id.* § 2A:15-5.14(c) (indicating exceptions to punitive damage cap).

The provisions of subsection b. of this section shall not apply to causes of action brought pursuant to P.L.1993, c.137 (C.2A:53A-21 et seq.), P.L.1945, c.169 (C.10:5-1 et seq.), P.L.1989, c.303 (C.26:5C-5 et seq.), P.L.1992, c.109 (C.2A:61B-1) or P.L.1986, c.105, (C.34:19-1 et seq.), or in cases in which a defendant has been convicted pursuant to

NM	Yes	"Punitive or exemplary damages may be awarded only when the conduct of the wrongdoer may be said to be maliciously intentional, fraudulent, oppressive, or committed recklessly or with a wanton disregard of the plaintiff[s] rights." ¹⁹⁶	No	
NV	Yes	Punitive damages can be awarded when the defendant is "guilty of oppression, fraud, or malice." ¹⁹⁷	Yes	Damages are capped at three times the compensatory damages if the compensatory damages are more than \$100,000 and \$300,000 if the compensatory damages are less than \$100,000. ¹⁹⁸ Cases involving product liability, insurance fraud, toxic waste, housing discrimination, and defamation are not subject to these caps. ¹⁹⁹
NY	Yes	The defendant must act with "intentional or deliberate wrongdoing, aggravating or outrageous circumstances, fraudulent or evil motive, or conscious act in willful and wanton disregard of another's rights." ²⁰⁰	No	
OH	Yes	Punitive damages are	No	

N.J.S.2C:11-3, N.J.S.2C:11-4, R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) or the equivalent under the laws of any other jurisdiction.

Id. § 2A: 15-5.14(c).

196. *Loucks v. Albuquerque Nat. Bank*, 418 P.2d 191, 199 (N.M. 1966).

197. *NEV. REV. STAT. ANN.* § 42.005(1) (2009).

198. *Id.* §§ 42.005(1)(a)-(b).

199. *Id.* § 42.005(2).

200. *Pearlman v. Friedman Alpren & Green LLP*, 750 N.Y.S.2d 869, 869 (N.Y. App. Div. 2002) (holding punitive damages unwarranted absent deliberate wrongdoing, evil motive, etc.); *see also* *Don Buchwald & Assocs., Inc. v. Rich*, 723 N.Y.S.2d 8, 8 (N.Y. App. Div. 2001) (allowing punitive damages only for intentional wrongdoing, outrageous fraud, or willful and wanton acts); *Le Mistral, Inc. v. Columbia Broad. Sys.*, 402 N.Y.S.2d 815, 817 (N.Y. App. Div. 1978) (stating exemplary damages only allowed when wrong aggravated by evil, willful, intentional or reckless indifference).

		available if the defendant acted with, or authorized acts of, malice or aggravated fraud. ²⁰¹		
OK	Yes	An award of punitive damages depends on the degree to which the defendant: engaged in behavior that was a hazard to the public; profited from the behavior, involved concealment of the acts; was aware of the acts; the number of employees involved in the act (for corporations); and the financial worth of the defendant. ²⁰²	Yes	If the defendant acted with reckless disregard, punitive damages are capped at the greater of \$100,000 or actual damages. ²⁰³ In cases where the defendant acted with malice, the cap is the greatest of \$500,000, two times the compensatory damages, or the financial benefit of the behavior to the defendant. ²⁰⁴ If it is found beyond a reasonable doubt that the defendant acted in a manner that threatened a human life, there is no cap. ²⁰⁵
OR	Yes	Punitive damages are available when it is proven by clear and convincing evidence that the defendant acted with malice or “a reckless and outrageous indifference to a highly unreasonable risk of harm and has acted with a conscious indifference to the health, safety and welfare of others.” ²⁰⁶	No general limits	Punitive damages are unavailable in medical malpractice cases. ²⁰⁷
PA	Yes	Punitive damages are available when the defendant engages in outrageous conduct, or has an “evil motive or [a]	Yes	Punitive damages are capped at 200% of the compensatory damages, unless the defendant is guilty of intentional misconduct, which has no cap.

201. OHIO REV. CODE ANN. § 2315.18 (2010).

202. OKLA. STAT. ANN. tit. 23 § 9.1(A) (2008).

203. *Id.* § 9.1(B).

204. *Id.* § 9.1(C).

205. *Id.* § 9.1(D).

206. OR. REV. STAT. ANN. § 31.730 (West 2009).

207. *Id.* § 31.740.

		reckless indifference to the rights of others.” ²⁰⁸		Punitive damages cannot be less than \$100,000, unless the compensatory damages are less than \$100,000. ²⁰⁹
RI	Yes	“[P]unitive damages are proper only in situations in which the defendant's actions are so willful, reckless, or wicked that they amount to criminality.” ²¹⁰	No	
SC	Yes	The defendant must engage in conduct demonstrating “malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof” for punitive damages to be awarded. ²¹¹	No	
SD	Yes	Punitive damages are available when the defendant engages in “oppression, fraud, or malice, actual or presumed, or in any case of wrongful injury to animals, being subjects of property, committed intentionally or by willful and wanton misconduct, in disregard of humanity.” ²¹²	No	
TN	Yes	Punitive damages are awarded “only if [the court] finds a defendant has acted either (1)	No	

208. *Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1096 (Pa. 1985) (stating Pennsylvania guidelines for awarding punitive damages).

209. 40 PA. CONS. STAT. § 1301.812-A(g) (1999).

210. *Greater Providence Deposit Corp. v. Jenison*, 485 A.2d 1242, 1244 (R.I. 1984) (illustrating use of punitive damages in punishing offender and deterring future conduct, not compensating plaintiff); *see also Serra v. Ford Motor Credit Co.*, 463 A.2d 142, 151 (R.I. 1983) (upholding principle that punitive damages only for willful, reckless, or wicked actions).

211. *King v. Allstate Insurance Co.*, 251 S.E.2d 194, 263 (S.C. 1979); *see also S.C. CODE ANN.* § 15-33-135 (2009).

212. S.D. CODIFIED LAWS § 21-3-2 (2009).

		intentionally, (2) fraudulently, (3) maliciously, or (4) recklessly ²¹³		
TX	Yes	Punitive damages are available if the defendant engaged in fraud, malice, or gross negligence. ²¹⁴	Yes	The cap is the greater of: the award for non-economic damages up to \$750,000 plus twice the award for economic damages, or \$200,000. ²¹⁵
UT	Yes	If the defendant engaged in “willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others,” punitive damages may be awarded. ²¹⁶	No	
VA	Yes	Punitive damages are available when the defendant engages in “negligence which is so willful or wanton as to evince a conscious disregard of the rights of others, as well as malicious conduct, will support an award of punitive damages ²¹⁷	Yes	Maximum cap of \$ 350,000. ²¹⁸
VT	Yes	Punitive damages are allowed when the defendant engages in “conduct manifesting personal ill will, evidencing insult or	No	

213. See *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992) (setting out Tennessee punitive damages rule).

214. See TEX. CIV. PRAC. & REM. CODE ANN. § 41.003 (a)(1)-(3) (2008).

215. See *id.* § 41.008(b)(1)-(2) (2009).

216. UTAH CODE ANN. § 78B-8-201(b) (2008).

217. *Booth v. Robertson*, 374 S.E.2d 1, 3 (Va. 1988) (quoting *King v. Commonwealth*, 231 S.E.2d 312, 316 (Va. 1977)).

218. VA. CODE ANN. § 8.01-38.1 (2007).

		oppression, or showing a reckless or wanton disregard of [a party's] rights." ²¹⁹		
WA	No	Punitive damages are not permitted. ²²⁰	No	
WI	Yes	Damages are allowed when the defendant's behavior is "willful, wanton or reckless." ²²¹	No	
WV	Yes	Punitive damages are awarded in circumstances where the defendant engaged in malice, oppression, wanton, willful, reckless conduct, or criminal indifference. ²²²	No	"[T]here can be no mathematical bright line relationship between punitive damages and compensatory damages." ²²³
WY	Yes	"[P]unitive damages are awarded to punish the defendant and deter others from such conduct in the future." ²²⁴	No	"No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person." ²²⁵

219. *Crump v. P & C Food Markets, Inc.*, 576 A.2d 441, 449 (Vt. 1990).

220. *See Spokane Truck & Dray Co. v. Hoefler*, 25 P. 1072, 1073 (Wash. 1891) (noting doctrine of punitive damages rests on unstable basis).

221. WIS. STAT. § 895.037(3)(b) (2006). The Wisconsin Supreme Court has since set forth the standard that punitive damages can be awarded if the plaintiff acts purposefully disregard the plaintiff's rights, or engages in the conduct despite awareness that his or her acts will result in the plaintiff's rights being disregarded. *See generally* *Wischer v. Mitsubishi Heavy Ind. America*, 694 N.W.2d 320 (Wis. 2005); *Strenke v. Hogner*, 694 N.W.2d 296 (Wis. 2005) (discussing Wisconsin punitive damages statute).

222. *See TXO Prod. Corp. v. Alliance Res. Corp.*, 419 S.E.2d 870, 887 (W. Va. 1992) (noting *Haslip* guidelines); *Wells v. Smith*, 297 S.E.2d 872, 878-81 (W. Va. 1982) (discussing nature of punitive damage awards).

223. *TXO*, 419 S.E.2d at 887.

224. *See State Farm Mut. Auto. Ins. Co. v. Shrader*, 882 P.2d 813, 837 (Wyo. 1994) (explaining theory of punitive damages).

225. WYO. CONST. ART. 10 § 4 (2008).