

RESEARCH GUIDE

PUNITIVE DAMAGES

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Punitive Damages' awards have grown extremely large, and the controversy surrounding them has grown also. This has caused the issue of punitive damages to become a political matter, with the business community proposing legal limits or caps on punitive damages. This guide researches the subject of punitive damages and proposed limits on punitive damages. This guide is composed of two sections: first, periodical articles; second, treatises. Consult the digest, WestLaw or other legal database for current case law. This is merely a research aid; it is not exhaustive. The period is from 1992 to 1998.

Periodical Articles

Bloom, Alan et. al. "The future of capital punishment: punitive damages from spilled coffee to bone marrow transplants." 16 Whittier Law Review Winter 1995. 971-985.

This article discusses the judicial standard, legislative standards, and criteria in regards to punitive damages awards in California. It also deals with the issue of punitive damages awards.

Crump, David. "Evidence, economics, and ethics: what information should jurors be given to determine the amount of a punitive-damage award?" 57 Maryland Law Review. Winter 1998. 174-235.

The amount of a punitive award should be controlled primarily by economic analysis. The author discusses the economic function of punitive damages and presents arguments against the economic approach, and the rules and their applications to determine the amount of a punitive damage award.

Davis, Jim II. "Why the states (not the U. S. Supreme Court) should review substantive due process challenges to large punitive damage awards." 46 University of Kansas Law Review. January 1998. 395-414.

The courts intrusions upon this state-controlled area of the law may discourage states from proposing new legislation and suppress any potential solutions to the problem. States should have the abilities to assess and handle their own cases.

____ "Developments in the law: the civil jury." 110 Harvard Law Review. May 1997. 1408-1536.

The continued use of juries in civil trials has been heavily criticized, but there are reforms that can be adopted that would maximize the benefits that accrue from civil juries. Reform issues to be considered include jury selection, the contribution juries make to democracy and the legitimacy of the justice system, jury size in federal Courts, juror education and assistance in complex cases and the ability of juries to decide punitive damages issues.

Hager, Mark M., and Ned Miltenburg. "Punitive damages and the free market." 31 Trial. September 1995. 28(7).

This article attempts to dispel of the myth that punitive damages are an economically irrational tool. Punitive damages are an economically sensible way out of deterring tortious conduct, particularly the kind exemplified by BMW's efforts to sell diminished valued cars at net to consumers.

Hansen, Mark. "A punitive surprise." 82 ABA Journal. March 1996. 18(1).

This article discusses the Alabama Supreme Court's order involving the case of *Life Insurance of Georgia v. Johnson* (1995), stating that all cases in which punitive damages are sought will be bifurcated.

Hoole, Gregory Nathan. "In the wake of seemingly exorbitant punitive damage awards America demands caps on punitive damage - are we barking up the wrong tree?" 22 Journal of Contemporary Law. Fall 1996. 459-484.

Congress should consider the Split award statute to apportion a large percentage of the punitive damage award to the state. It will reduce the incentives for plaintiffs seeking punitive damage

awards in claims that are not "truly meritorious."

Hunter, Robert D. "Punitive damages in Alabama: Post-verdict review, tort reform and Haslip. (Pacific Mutual Life Insurance Company v. Haslip)." 22 Cumberland Law Review. Winter 1992. 255-267.

The question is whether the procedure for the award and review of punitive damages violated the guarantees of due process in Alabama as well as some other states.

Lagrow, John Zenneth. "Due process protection against excessive punitive damage awards." 32 New England Law Review. Fall 1997. 157-213.

BMW v. Gore is the beginning of the end of an age of confusion in the punitive damage arena because the United States Supreme Court has set guideposts by which other court that will be reviewing punitive damages can use to measure the excessiveness of the awards.

Macario, Matthew J. "Punitive damages awards and procedural due process in product liability cases." 68 Temple Law Review spring 1995. 409-437.

This journal essay discusses the Supreme Court's decision in the case of *Honda Motor Co. v. Oberg* (1995), and how it impacts punitive damages awards and procedural due process in products liability cases.

Massey, Johnathan S. "Why tradition supports punitive damages." 31 Trial. September 1995. 18(7).

Punitive damages are historically supported via Common Law English Courts and 19th Century U.S. Courts, but the defense bar's contention of there existing historical support for limits on punitive damages is false.

Mogin, Paul. "Why judges, not juries, should set punitive damages." University of Chicago Law Review. Winter 1998. 179-223.

The power to award punitive damages should not reside with juries in federal civil trial but with judges. The U.S. Supreme Court ruled in *Tull v. U.S.* that the plaintiff was not entitled to a jury-determined penalty under the 7th Amendment and other federal judges have ruled that punitive damages do not constitute a fact which can be tried by a jury. Because juries are not constitutionally empowered to set punitive damage amounts, judges should assume the power under existing law and procedure rules.

Polinsky, A. Mitchell. "Punitive damages: an economic analysis." 111 Harvard Law Review. Feb 1998. 869-962.

The deterrent and punitive goals of punitive damage awards are not accomplished under the traditional system where awards are assessed on the basis of defendants' economic ability to pay and culpability. Deterrence can better be accomplished by a system which awards punitive damages only where defendants are very likely to otherwise escape liability. The punishment function is effective only when placed upon individuals and corporate employees.

Prater, Nathan C. "Punitive damages in Alabama: a proposal for reform." 26 Cumberland Law Review. Spring 1996. 1005-1044.

This articles discusses the current state of punitive damage law in Alabama and presents a proposal for reform. The author suggest that by instituting these proposed reforms of punitive damages, the legislature and the judiciary of Alabama could protect the interests of all the people of the state.

Priest, George L. "Punitive damages reform: the case of Alabama." 56 Louisiana Law Review. Summer 1996. 825-840.

This is a four part article that reviews the Alabama experience regarding the increasing

commonality of Alabama punitive damages verdicts and claims.

Rainer, Drew and James A. Babst. "Pro and con." 43 Louisiana Bar Journal. October 1995. 256-263(7).

This article presents a two-sided debate pointing out both the pros and cons of punitive damages.

Reske, Henry J. "Guidelines instead of bright lines: state rulings on punitives unlikely to be uniform despite High Court guidance." ABA Journal. July 1996. 82.

The U.S. Supreme Court in *BMW v. Gore* gave standards for deciding whether punitive damages were reasonable rather than imposing a mathematical limit. These included how reprehensible the defendant's conduct was, the ratio of compensatory to punitive damages and the civil or criminal penalties that could be given for comparable misconduct.

Reuben, Richard C. "Investor's attorneys find task force report fault." 82 ABA Journal. April 1996. 40(2).

This article highlights the controversy arising due to a securities task force's report to the National Association of Securities Dealers recommending a cap on punitive damages involving securities.

Reuben, Richard C. "This model sports not caps; proposal by uniform law commissioners tightens punitive procedures." ABA Journal October 1996. 82.

The Uniform State Laws approved in July 1996 by the National Conference of Commissioners, expressly rejects such a limitation, saying its intent is to improve the awarding of damages so

that arbitrary limits are no longer necessary. The act lists nine factors which juries should consider in setting punitive awards. Other features of the act are listed.

Richards, R. McKenna, Jr. "Punitive damages and the modern meaning of procedural due process. (case note)." 70 North Carolina Law Review. April 1992. 1362-1388.

The effect of *Pacific Mutual* affirms the constitutionality under the Due Process Clause of the fourteenth amendment of common-law punitive damages assessment, at the same time it leaves open the possibility that a jury award may be grossly excessive as to deny due process.

Santa Lucia, Robert A. "Punitive damages: overview and update." 69 Florida Bar Journal. April 1995. 40(3).

This article provides a comprehensive overview of the laws involving punitive damages in Florida, explores how plaintiff's counsel may determine whether valid punitive damages claim exists and provides guidance to defense counsel.

Shoop, Julie G. "Punitive damages award found unconstitutional." 32 Trial. March 1996 12(3).

For the first time, a federal appeals court has held that a punitive damages award violated the U.S. Constitution. This article discusses the Eighth Circuit Court of Appeals' ruling in the case of *Pulla v. Amoco Oil Co.* (1995), stating that due to punitive award being so out of proportion to actual damages, defendant's due process rights were violated.

Stuart III, Colbern C. "Mean, stupid defendants jarring our constitutional sensibilities." 30 California Western Law Review. Spring 1994. 313-345.

This article addresses the Supreme Court's decision in the case of *TXO Prod. Corp. v. Alliance*

Resources Corp. (1993).

Thompson, Mark. "Applying the brakes to punitives: but is there anything to slow down?" ABA Journal Sept. 1997. 83.

Opponents of capping punitive damages points to how few cases result in punitives, just 6% of 2,849 cases ruling for the plaintiffs, and state that most awards are reasonable, with a statistical mean of 38% more than compensatory damages. However, this fails to recognize the true cost of punitives in that they are more likely to be assessed against large corporations, can damage a company's reputation, take more time and money to defend against and may cause companies to increase prices. Limit supporters believe limits would reduce the number of suits by encouraging settlements.

Thumma, Samuel A. "In the year since the high court's landmark decision in 'BMW', federal courts have reduced punitive damage awards more frequently than state courts." The National Law Journal. June 30, 1997. p B5, col. 1.

The federal courts have in the year since the 1996 decision in *BMW of North America v. Gore* applied more frequently than the state ones its constitutional challenges to punitive damages and have used the BMW guidelines to vacate or reduce punitive damages. This has happened in more than 40% of the cases applying BMW. Significant punitive damage awards involving physical safety were usually the ones to survive BMW challenges.

Treatises

Blatt, Richard L. Punitive damages: A state by state guide to law and practice. St. Paul: West Publishing Co., 1991.

(KF 9778 .M3 1990)

This publication traces the history, constitutionality, recovery, taxation, insurability, and reinsurance of punitive damages. It also provides a summary of the relevant laws of the states and territories.

Ghiardi, James D. and John J. Kircher. Punitive damages: Law and practice. New York, NY: CBC, 1994.

(KF 1250 .G55 1994)

This treatise provides a comprehensive and definite analysis of the entire doctrine of punitive damages.

Schleuter, Linda L. and Kenneth R. Redden. Punitive Damages. Charlottesville: Michie Butterworth Law Publishers, 1995.

(KF 1249 .S35 1995)

This is a national treatise on the subject of punitive damages. It addresses punitive damages in such areas as contracts, property, torts, AIDS, employment law, family law, insurance, and bankruptcy.