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## The Blockbuster Punitive Damages Awards

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# THE BLOCKBUSTER PUNITIVE DAMAGES AWARDS

*W. Kip Viscusi\**

## ABSTRACT

This paper provides an analysis of sixty-four punitive damages awards of at least \$100 million. Based on an inventory of these cases, there is evidence that these blockbuster awards are highly concentrated geographically, as two states account for twenty-seven of the sixty-four awards. The awards also have been rising substantially over time, with the majority of these blockbuster awards taking place since 1999. An assessment of the current status of the blockbuster punitive damages awards indicates that most of these awards have been appealed, but the reversal of these punitive damages awards is the exception rather than the rule. Many large punitive damages awards are settled without any appeal. The ratio limits outlined in *State Farm v. Campbell* will affect over ninety percent of the blockbuster awards and over 90% of the damages associated with these awards if a ratio of 1.0 becomes the upper limit on punitive damages.

## INTRODUCTION

Punitive damages represent the most visible symptom of the ills of the U.S. tort system. Because of the magnitude of punitive damages, headlines often tout the levels of penalties being imposed and the economic horrors that could result from such awards. Such accounts do not, however, provide a reliable indication of the magnitude of punitive damages awards. To provide a perspective on the frequency and amount of the large punitive damages awards, this paper provides a comprehensive inventory of what I term the “blockbuster” punitive damages awards and the ultimate economic costs that they impose.

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Punitive damages have attracted the interest of tort reformers for good reason. Much of the concern with respect to punitive damages stems from the imprecise guidance that juries are given in setting the award levels. A recent series of experimental studies have examined the way in which these awards are set as well as a variety of shortcomings of jury behavior.<sup>1</sup> Punitive damages instructions seldom give jurors precise numerical guidance that they can use in setting the damages amount.<sup>2</sup> Moreover, sometimes there is a tendency among jurors not to follow the specific instructions they are given.<sup>3</sup> Even if one were to provide jurors with specific numerical guidance to assist them in setting punitive damages awards—such as the use of the optimal deterrence theory implicit in law and economics principles—jurors either cannot or will not embrace such a methodology.<sup>4</sup>

The positive aspect of jury behavior is that jurors appear to be quite capable of reaching a consensus with respect to whether a particular behavior is morally blameworthy. The difficulty arises when jurors must then translate their moral outrage toward wrongful conduct into a dollar amount. The inability of jurors to carry out this task successfully leads to much greater variability in award levels than in jurors' assessment of the blameworthiness of the behavior.

The result is a series of shortcomings in jury decisionmaking that are difficult to overcome. Decisions regarding liability and recklessness may be seriously flawed. Jurors may be subject to a variety of hindsight biases making them unable to take themselves back to the pre-accident situation in assessing whether the defendant has been reckless and punitive damages are warranted.<sup>5</sup> Jurors also appear to be quite ill-suited to undertake the kind of broad based national benefit-cost analysis that is needed to assess whether the appropriate balance between risk and cost has been struck for mass-marketed products.<sup>6</sup>

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<sup>1</sup> For a compilation of many of these studies, see CASS R. SUNSTEIN ET AL., *PUNITIVE DAMAGES: HOW JURIES DECIDE* (2002).

<sup>2</sup> *Id.* at 259–60 (providing representative jury instructions, which are qualitative in character).

<sup>3</sup> *Id.* at 77–93 (documenting the general failure of jurors in experimental contexts to abide by instructions).

<sup>4</sup> *Id.* at 132–170; see also W. Kip Viscusi, *The Challenge of Punitive Damages Mathematics*, 30 J. LEGAL STUD. 313, 342–43 (2001).

<sup>5</sup> Reid Hastie et al., *Juror Judgments in Civil Cases: Hindsight Effects on Judgments of Liability for Punitive Damages*, 23 LAW & HUM. BEHAV. 597, 609–11 (1999); W. Kip Viscusi, *How Do Judges Think About Risk*, 1 AMER. LAW & ECON. REV. 26, 46–55 (1999).

<sup>6</sup> SUNSTEIN ET AL., *supra* note 1, at 228–33; W. Kip Viscusi, *Corporate Analysis: A Reckless Act*, 52 STAN. L. REV. 547, 550–51 (2000).

Jurors may also be subject to anchoring effects whereby plaintiffs' attorneys suggest plausible, but possibly irrelevant, dollar anchors to create a focal point for jury decisionmaking and to boost the value of the award.<sup>7</sup>

Very large punitive damages awards are the target of many punitive damages reform efforts because of their potentially damaging economic consequences. These extremely large awards sometimes run into the billions of dollars and are highly unpredictable. As a result, these large awards do not have a deterrent effect because the penalties for wrongful conduct are not anticipated. Indeed, empirical evidence suggests that there is no significant safety incentive effect from punitive damages.<sup>8</sup> Large awards may also tend to depress innovation and deter the introduction of new, but risky, products that might expand the scope of the business' liability. On an empirical basis, increasing the level of liability costs in an industry initially increases innovation but eventually has a negative depressing effect.<sup>9</sup> Moreover, as emphasized by Rubin, Calfee, and Grady, the level of punitive awards and the contexts in which these large penalties generate economic consequences are generally harmful to consumer interests.<sup>10</sup>

A potential rebuttal to these concerns is the claim that such awards are highly predictable, rather than unpredictable.<sup>11</sup> Moreover, according to advocates of punitive damages, the award levels that garner the headlines may not be an accurate reflection of the ultimate cost of these major punitive damage awards. If these awards are reversed on appeal, for example, then the economic cost will be reduced, perhaps even eliminated in particular cases.

The focus of this Article is on the blockbuster awards and on their ultimate implications for the costs imposed on defendants. This Article will not delve into issues such as whether punitive damages awards are set appropriately by jurors or whether they have beneficial or harmful effects on the economy.

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<sup>7</sup> Viscusi, *supra* note 6, at 562–63.

<sup>8</sup> See W. Kip Viscusi, *The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts*, 87 GEO. L.J. 285, 288–99 (1998); W. Kip Viscusi, *Why There Is No Defense of Punitive Damages*, 87 GEO. L.J. 381, 381–82 (1998).

<sup>9</sup> See W. Kip Viscusi & Michael J. Moore, *Product Liability, Research and Development, and Innovation*, 101 J. POL. ECON. 161, 164 (1993).

<sup>10</sup> Paul H. Rubin et al., *BMW v. Gore: Mitigating the Punitive Economics of Punitive Damages*, 5 S. CT. ECON. REV. 179, 188 (1997).

<sup>11</sup> For an interesting exchange on this predictability issue, compare Theodore Eisenberg et al., *The Predictability of Punitive Damages*, 26 J. LEGAL STUD. 623 (1997), with A. Mitchell Polinsky, *Are Punitive Damages Really Insignificant, Predictable, and Rational? A Comment on Eisenberg et al.*, 26 J. LEGAL STUD. 663 (1997).

Rather, the emphasis will be much more focused on developing an inventory of the blockbuster awards and their ultimate disposition.

This Article begins with a comprehensive inventory of what I call the “blockbuster” punitive damages awards. Whereas \$1 million awards used to generate media coverage for a substantial award, we now live in an era in which there may be award levels of a billion dollars or even more. This Article uses a punitive damages award of \$100 million for identifying blockbuster awards. I identified sixty-four awards equal to or exceeding this amount as of April 2004.

In addition to simply tallying these various awards, it is useful to explore how the distribution of these awards varies with different matters of concern. Are, for example, judges just as likely to award such blockbuster punitive damages awards as are juries? Are these awards predictable based on the level of compensatory damages in the case? Is there a trend in such blockbuster award levels, or have they always been a standard feature of the legal landscape? Are particular venues responsible for most of the awards, or are they uniformly distributed throughout the United States?

After examining these issues, I will then examine the current status of these awards. In particular, to what extent are these awards currently under appeal? Have many of these awards been settled or overturned by the courts?

Finally, I will examine the effect of the U.S. Supreme Court decision in *State Farm v. Campbell*<sup>12</sup> on blockbuster awards. That decision provided the most concrete guidance to date on the reasonable ranges for punitive damages awards. To what extent will the guidance provided by the U.S. Supreme Court in this decision constrain blockbuster awards? In that regard, it will be interesting to compare how the various numerical guidelines the Court provided on the permissible ratio of punitive damages to compensatory damages will affect the blockbuster awards as compared with punitive damages awards more generally.

Overall, there has been an explosive growth in punitive damages awards of \$100 million or more as well as a substantial increase in the number of billion dollar punitive damages awards. *State Farm* has the potential to have a dramatic effect on the overwhelming majority of these punitive awards and on the total economic costs they impose.

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<sup>12</sup> *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

## I. INVENTORY OF THE BLOCKBUSTER AWARDS

This Article focuses on the blockbuster-level punitive damage awards that are at least \$100 million.<sup>13</sup> Although there is nothing unique about the \$100 million cutoff, it does make the inventory of large punitive damage awards much more manageable than would a lower cutoff of, for example, \$1 million. Moreover, it is these very extreme punitive damages awards that receive the greatest media attention and serve as the focal point for liability reform efforts. An award in this range was also the subject of the *State Farm* case, recently considered by the U.S. Supreme Court.

The nature of the search undertaken by Joni Hersch and myself involved an extensive review of a wide variety of available sources. The search included LEXIS combined jury verdicts and settlements, a variety of Westlaw databases, articles in *American Lawyer*, major newspapers, and the Google search engine. In all, there were sixty-four punitive damages awards that met the \$100 million cutoff. The first such award was in 1985, but the search was not limited to awards starting at that date. Rather, the search process simply did not identify any awards that met the \$100 million cutoff before 1985. The search also includes all awards identified through April 2004.

Table 1 provides a listing of these sixty-four blockbuster awards and some of their principal case characteristics for bench trials and for jury trials. The first column of the table lists the case name and the state in which the award was made. The second column gives the year of the decision. The third column gives the level of the punitive damages award. The cases appear in increasing order of the magnitude of the punitive damages award. The final column of the table calculates the ratio of punitive damages to compensatory damages. While there is no specific numeric value that such a ratio should hold in order to be an appropriate punitive damages award, the U.S. Supreme Court frequently discusses the reasonableness of punitive damages awards in terms of this ratio and has recently provided guidance with respect to what the appropriate ratio should be.<sup>14</sup>

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<sup>13</sup> See Joni Hersch & W. Kip Viscusi, *Punitive Damages: How Judges and Juries Perform*, 33 J. LEGAL STUD. 1, 6 tbl.1 (2004). The inventory provided in Table 1 of this Article updates Table 1 in the *Journal of Legal Studies* article. It also extends that analysis to consider the subsequent disposition of these awards. Cases not cited in the text of this Article can be found in Table 1. Only appellate decisions will be cited to footnotes.

<sup>14</sup> *State Farm*, 538 U.S. at 424–25.

The top panel of Table 1 summarizes the awards that were the result of bench trials, while the bottom panel of the table gives the punitive damages awards levied by juries. Only three of the sixty-four cases that appear in Table 1 were the result of bench trials. Overall, juries accounted for over 95% of all cases in which there was a punitive damages award of at least \$100 million.

This greater relative role of juries in awarding substantial punitive damages is consistent with the statistical analyses of a large sample of state court data from 1996 by Hersch and Viscusi.<sup>15</sup> That article used the 1996 Civil Justice Survey of State Courts data, controlling for case characteristics and venue, to show that juries were more likely to award punitive damages than were judges and that juries were also likely to award a greater amount of punitive damages. The most apparent differences were at the extreme high end of the punitive damages spectrum, as juries were responsible for the largest awards. There were few differences between judges and jurors in terms of awarding low and moderate levels of punitive damages. This greater relative role of juries with respect to very large punitive damages awards is consistent with the findings in Table 1, in which juries play a dominant role. The jury share of blockbuster punitive damages cases is also greater than the fraction of cases handled by juries rather than bench trials.<sup>16</sup>

Large corporate defendants appear frequently in this list of blockbuster cases. The cigarette industry has been particularly noteworthy in making a number of appearances, which notably excludes the \$240 billion settlement of the state cases against the tobacco industry.<sup>17</sup> That huge settlement amount and the attendant publicity may, in part, have served as an anchor for subsequent punitive damages awards in the billions.<sup>18</sup>

The largest bench trial award in Table 1 is for a class action case, *Price v. Philip Morris, Inc.*,<sup>19</sup> in which there were claims that smokers of light cigarettes were the victims of the fraud that, in the view of the plaintiffs, light cigarettes were represented by the manufacturers as being safer than conventional cigarettes. This class action took place in Madison County, Illinois, which some observers have suggested is a haven for plaintiff-oriented

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<sup>15</sup> See Hersch & Viscusi, *supra* note 13.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> For discussion of the settlement and its costs, see W. KIP VISCUSI, *SMOKE-FILLED ROOMS: A POSTMORTEM ON THE TOBACCO DEAL* (2002).

<sup>18</sup> *Id.* at 58.

<sup>19</sup> This case was formerly *Miles v. Philip Morris, Inc.*



class actions.<sup>20</sup> This \$10.2 billion total damages award required that the company post a \$12 billion bond during the appeal, which created problems for the defendant. The Illinois Supreme Court cut the bond amount to \$6 billion and agreed to hear the company's appeal directly, rather than allowing the case to go to the appellate court.<sup>21</sup> Thus, the large stakes of these cases may affect the feasibility of defendants' options.

Four of the jury trials listed in Table 1 also involved cigarette industry defendants, and one was a class action. Individual smoker cases led to punitive damages awards of \$150 million in *Schwarz v. Philip Morris, Inc.*, \$3 billion in *Boeken v. Philip Morris, Inc.*, and \$28 billion in *Bullock v. Philip Morris, Inc.* In addition, the Florida class action of *Engle v. R.J. Reynolds Tobacco Co.* led to a \$145 billion punitive damages award in that state.

Cases involving automobile companies are also prominently represented. The listing of jury awards includes three cases in which the defendant was General Motors, one case in which the defendant was Ford, and one case in which the defendant was Chrysler. In addition, tire manufacturers and companies that provide insurance for automobile accidents have also been the target of these major awards. Motor vehicle travel poses well-known, often inherent, risks.

A third major cluster of cases involves companies that engage in the production of gasoline and chemicals. Some of these cases involve environmental damages claims, as in the *Exxon Valdez* oil spill case against Exxon, whereas others involve contract disputes of various kinds. As in the cases of the tobacco industry and the automobile industry, the large stakes involved in these companies' operations coupled with the fact that the products provided involve some inherent elements of risk often make these entities a target for blockbuster punitive damages awards.

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<sup>20</sup> Nicknames for Madison County, Illinois, include "The Lawsuit Capital of the World" and "Class-Action Paradise." Amalia Deligiannis, *Madison County: A Corporation's Worst Nightmare*, 14 CORP. LEGAL TIMES 52 (2004). The American Tort Reform Association (ATRA) issued a report in 2003 in which Madison County, Illinois was named the number one "Judicial Hellhole" and a "jackpot jurisdiction." AMERICAN TORT REFORM ASSOCIATION, *BRINGING JUSTICE TO JUDICIAL HELLHOLES* 2003, at 3 (2003), available at <http://www.atra.org/reports/hellholes/report.pdf>; see also Sue Reisinger, *Shell Oil's Hefty Settlement: A Harbinger for MTBE Defendants*, 12 CORP. LEGAL TIMES 54 (2002) (providing another example of Madison County's reputation).

<sup>21</sup> John Flynn Rooney, *Witnesses Take Sides on Limiting Appeal Bonds*, CHI. DAILY L. BULL., Jan. 27, 2004, at 1; see Michael Bologna, *Illinois Courts Consider Appeal Bond Rules Following Landmark Philip Morris Decision*, 33 BNA PRODUCT SAFETY & LIABILITY REP. 133, 134 (2004).

After each case listed in Table 1, there is an indication of the state in which the award was made. Table 2 summarizes the distribution of these awards by state, where the states are ordered in terms of the number of blockbuster punitive damages awards that appear in Table 1. California and Texas head the list—twenty-seven of the sixty-four punitive damages awards in the table are from these two states. Other venues—such as Alabama, Illinois, and Mississippi—that have developed a reputation for being sympathetic to plaintiffs also make an appearance on this table.

The third column in Table 2 lists the dollar magnitude of these awards, which are then converted into punitive damages per capita in the final column of Table 2. Florida leads all states in terms of the magnitude and per capita value of punitive damages, owing almost entirely to the huge award in *Engle v. R.J. Reynolds Tobacco Co.*, which accounts for \$145 billion of the \$145.7 billion in total punitive damages awards in the blockbuster cases in that state. If we exclude the effect of this outlier, California ranks first in terms of punitive damages totals, followed by Arkansas and Texas. In terms of the punitive damages amount per capita, Florida is followed very closely by Arkansas, with the next cluster of punitive damages values from California, Louisiana, and Alabama.

Even with the large populations in California and Texas, one cannot make the case that blockbuster punitive damages awards are a random event with equal probability in every state. The population of New York is more than half that of California and larger than that of any other state in Table 2, but New York has never had a blockbuster punitive damages award. In fact, there are thirty-two states that have never had a punitive damages award in excess of \$100 million.

The second column in Table 1 lists the year of the decision leading to the blockbuster award, ranging from 1985 to 2003. Table 3 breaks down the distribution of these time periods into five-year intervals to explore whether there are trends among these punitive damages awards. The number of awards per time period clearly has been on the rise. Just over half of the punitive damages awards listed in Table 1 took place from 1999 to 2003. Many of the remainder were decided in 1994 to 1998.

However, the trend in the magnitude of awards does not rise steadily, in part because of the lumpy nature of some very large awards. The pre-1989 period exhibited a total award amount in excess of that from 1989 to 1993 due to the influence of the \$3 billion punitive damages award in *Pennzoil Co. v.*

*Texaco, Inc.* However, over 90% of all the blockbuster punitive damages award amounts took place from 1999 to 2003. This total is strongly influenced by a particular outlier, the \$145 billion award in *Engle v. R.J. Reynolds Tobacco Co.* However, even excluding the influence of *Engle*, the most recent time period would exhibit the highest blockbuster punitive damages award total. The general sense that extremely large punitive damages awards are increasing in frequency and increasing in total value is certainly borne out by the evidence.

The final three columns of Table 1 list the punitive damages award amount, the compensatory damages award amount, and the ratio of punitive damages to compensatory damages. A key concern in the literature has long been the extent to which compensatory damages are a predictor of the level of punitive damages and, in particular, whether the damages ratio indicates a reasonable relationship within a particular award.<sup>22</sup> From the standpoint of the law and economics theory of optimal deterrence, there should be a strong link between the punitive damages award and the compensatory damages award, whereby the total of all damages should equal the compensatory damages value divided by the probability that there will be detection of and liability found for the wrongful conduct.<sup>23</sup> Punitive damages ratios have played a prominent role in pronouncements by the U.S. Supreme Court with respect to the reasonableness of punitive damages amounts.<sup>24</sup>

A longstanding statistical concern in the literature has been whether the level of compensatory damages are predictive of the value of punitive damages.<sup>25</sup> It should be emphasized that this "predictability" overstates the degree of predictability that the defendant would have at the time the defendant engaged in the wrongful conduct. The defendant does not know whether the wrongful conduct will in fact lead to a finding of liability and any

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<sup>22</sup> See Eisenberg, *supra* note 11 (discussing the relationship between compensatory and punitive damages); Polinsky, *supra* note 11 (same).

<sup>23</sup> A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 HARV. L. REV. 869, 874-75 (1998).

<sup>24</sup> See *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996). The Court remarked that "perhaps [the] most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff." *Id.* at 580 (citation omitted); see also *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) (finding that a ratio of four to one is not constitutionally improper). But see *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993) (affirming a judgment in which punitives were over 526 times the actual damages).

<sup>25</sup> See Eisenberg, *supra* note 11 (discussing the relationship between compensatory and punitive damages); Polinsky, *supra* note 11 (same).

compensatory damages award and whether there will also be a punitive damages award. Thus, any analysis of predictability that focuses on the relationship between the observed punitive damages amount and compensatory damages award will be conditioned on the presence of a compensatory damages award and a punitive damages award. This comparison overstates the knowledge defendants have at the time they engaged in the wrongful conduct that led to the punitive award. In practice, defendants do not know in advance that there will be a compensatory award and the amount of this award. Nor are they aware that there will be a punitive damages award given the unpredictability of these awards.

Table 4 summarizes two sets of regression results linking punitive damages to compensatory damages. The first set of results in Panel A is a simple regression of the punitive damages value against a constant term and the compensatory damages value, where the sample used for this analysis excludes *Engle v. R.J. Reynolds Tobacco Co.* because the compensatory damages award for the class representatives reflects a different scope of damages than are reflected in the punitive damages award for the entire class. In terms of the linear specification in Panel A, there is no statistically significant relationship between compensatory damages and punitive damages. Indeed, this variable has no explanatory power in a simple regression, with an adjusted R-squared that is negative.

The specification in Panel B regresses the log of punitive damages against the log of compensatory damages. The logarithmic transformation mutes the effect of outliers with respect to punitive damages. Once this transformation is done, there is a weak but statistically significant relationship between the log of compensatory damages and the log of punitive damages, which explains 6% of the variation in the log of punitive damages.

The coefficient of the log of compensatory damages, which is statistically significant, has a convenient interpretation as well. The coefficient of 0.163 implies that for every 10% change in compensatory damages levels the value of the punitive damages award will increase by 1.63%. Thus, the elasticity of the response of punitive damages to the level of compensatory damages is relatively low for blockbuster cases.

These empirical estimates do not imply that it is impossible to develop a statistical model that is predictive of the level of punitive damages. As was discussed earlier, many of the largest awards are concentrated among industries that sell tobacco products, automobiles, and gasoline and other

chemicals. Firms in these industries or other deep pocket enterprises are more heavily represented in the blockbuster awards sample, especially at the high end. However, the question being addressed here is not whether one could increase the explanatory power of the punitive damages equation by simply adding other explanatory variables to the equation. That the explanatory power of the models could be increased by doing so certainly is the case. However, the key result is that the relationship between the level of compensatory damages and punitive damages is very weak for the blockbuster awards sample. Moreover, it also should be emphasized that even this limited statistical explanatory power is not tantamount to the award being predictable by the defendant before the wrongful conduct, as firms do not know in advance whether compensatory damages will be awarded and, if so, what their level will be.

## II. THE CURRENT STATUS OF THE BLOCKBUSTER AWARDS

The actual level of punitive damages awards may potentially misrepresent the economic effect of such awards in two principal ways. These awards may be reduced on appeal or settled for a lesser amount, thus diminishing their economic impact. An opposite effect is that major awards may induce parties to settle cases before the punitive damages award is levied, thus inducing a potential understatement of the total economic cost associated with large punitive damages awards.

To determine the extent that the punitive damages awards are reflective of significant economic damages actually being paid, Table 5 provides a summary of the current status of all the blockbuster punitive damages awards listed in Table 1. This table numbers the cases for ease of reference in subsequent breakdowns of the different case dispositions. This summary relies on publicly available information and was undertaken in much the same manner as was the compilation of the original case list in Table 1.<sup>26</sup> In some instances, the status of a case has not been resolved, as the case may still be under appeal. In other instances, there may be information that the case settled, but no information on the actual amount of the settlement. It is noteworthy that such nondisclosure of the settlement amount appears to be the norm for such settlements, as almost every settlement was for a confidential

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<sup>26</sup> See generally *infra* Table 5. The one exception is *Amoco Chemical Co. v. Certain Underwriters at Lloyd's of London*. That case's disposition is based on information obtained at the listed website. Email from website author (Feb. 29, 2004) (on file with author).

amount, and for those in which the amount is not entirely confidential, often the best available information is an estimated settlement range. For two of the cases there is no information that I have been able to identify regarding their current status.

To organize the overall flow of these sixty-four cases, Figure 1 provides a diagrammatic summary of cases listed by number from Table 5 in terms of the process that they underwent following the original punitive damages award. The first category lists cases in which the defendant filed an appeal, but this category includes thirty-nine of the sixty-four cases listed in Table 1. Among the cases that were appealed, ten were reversed, an additional three cases were reversed and subsequently led to an out-of-court settlement with the parties, and one case was reversed and is now under appeal.

The most prominent of these reversed cases is *Engle v. R.J. Reynolds Tobacco Co.*<sup>27</sup> This \$145 billion punitive damages class action was not included in the regression analysis linking punitive damages to compensatory damages because the compensatory damages in this case amounted to only \$12.7 million for the class representatives, whereas the \$145 billion punitive damages award was for the entire class. This mismatch between the scope for calculating compensatory damages and punitive damages is not only a problem for statistical analysis but also creates problems for judicial assessment of the appropriateness of such a punitive damages award. In particular, the calculated ratio of punitive damages to compensatory damages based on the available information regarding punitive damages and compensatory damages was 11,417, but what the ratio would be if the compensatory award reflected compensatory damages for the entire class cannot be determined.

In its decision overturning the punitive damages award, the court made a similar observation:

Establishment of this reasonable relationship requires a prior determination of the compensatory damages caused by the alleged misconduct. See Op. Att'y Gen. Fla., 2000 WL 329587 (Fla. A.G. 2000) ("[I]n the absence of any determination of the extent of compensatory damages, the court lacks a standard by which it can judge whether an assessment of punitive damages is reasonable or is grossly excessive.").<sup>28</sup>

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<sup>27</sup> This case was reversed by *Liggett Group Inc. v. Engle*, 853 So. 2d 434 (Fla. Dist. Ct. App. 2003).

<sup>28</sup> *Id.* at 451.

Without this prior determination, any comparison between a punitive award and the “actual harm” is impossible. For this reason, federal and other state courts have repeatedly held that compensatory damages must be tried before punitive damages.

The court also observed that the \$145 billion punitive damages award was a record-breaking amount that was too great to be permitted:

This trial produced the largest punitive damage verdict in American legal history. As acknowledged by even the plaintiffs’ purported experts, the \$145 billion punitive award will extract all value from the defendants and put them out of business, in violation of established Florida law that prohibits bankrupting punitive awards.<sup>29</sup>

The next category of cases in Figure 1 consists of punitive damages cases in which the verdict was affirmed. This category consisted of two cases from Table 1, one of which was subsequently appealed. These affirmed cases had ratios of punitive damages to compensatory damages of 4.6 and 1.3.

The third category of cases consists of cases currently under appeal. The five cases in this category have been appealed, but there has not yet been a court decision.

The fourth category of cases listed in Figure 1 consists of those in which punitive damages have been reduced. In three cases, the appeal led to a reduction in punitive damages, which was not subsequently appealed and did not lead to an out-of-court settlement. In five cases there was a reduction of punitive damages and either a current appeal or a possible or pending appeal in the case. Three cases in which punitive damages were reduced led to a settlement. For the cases in which the appeal led to a reduction in punitive damages, the amount of punitive damages remained substantial even after the appeal. The award in *Forti v. General Dynamics Corp.* was reduced to \$30 million, well below its earlier value of \$100 million and yielding a punitive to compensatory damages ratio of 4.1. The \$124.57 million punitive award in *Proctor v. Davis and Upjohn Co.* was reduced to \$6.1 million, yielding a ratio of 1.9. The appeals court in *Romo v. Ford Motor Co.* reduced that \$290 million award to a ratio of 5.0. This case was subsequently settled by the parties for \$23.7 million.<sup>30</sup> The appeals process yielded a punitive damages

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<sup>29</sup> *Id.* at 456.

<sup>30</sup> *Ford To Pay \$23.7 Million To Rollover Plaintiff After \$290 Million Punitive Award Is Tossed*, 33 BNA PRODUCT SAFETY & LIABILITY REP. 126 (2004) [hereinafter *Ford To Pay*].

award of \$300 million (ratio of 1.3) in *Hayes v. Courtney*, \$100 million (ratio of 18.0) in *Boeken v. Philip Morris, Inc.*, \$850 million (ratio of 425) in *In re New Orleans Tank Car Leakage Fire Litigation*, \$1.09 billion (ratio of 10.1) in *Anderson v. General Motors Corp.*, and \$28 million (ratio of 43.1) in *Bullock v. Philip Morris, Inc.*

With the exception of this final individual smoker case, every reduction of a \$1 billion punitive damages award has failed to result in an award under \$100 million. One possibility is that the large initial award does in fact reflect more serious harm and greater degrees of reckless behavior. An alternative hypothesis is that very large jury awards have an anchoring effect in the subsequent appeals process, thus providing a reference point for the punitive damages amounts that will be set after being reduced by the appeals court.

Four of the appeals have led to retrials, and in one case there was a new verdict. This new verdict case, *Exxon Corp. v. Department of Conservation and Natural Resources*, is noteworthy in that it illustrates that obtaining a new trial as the result of an appeal may not always be to the defendant's advantage, even in situations where the initial ratio of punitive damages may appear to be excessive. This case involved an accounting dispute between Exxon and the State of Alabama. The original punitive damages award was \$3.4 billion, which led to a ratio of punitive damages to compensatory damages of 39. As a result of the retrial, the jury lowered the compensatory damages amount from \$87.7 million to \$63.6 million. However, the jury increased the punitive damages award from its earlier level to \$11.9 billion.<sup>31</sup> The new punitive damages to compensatory damages ratio of 185.5 is more than four times as great as the original punitive damages ratio that was under appeal. In March, 2004, the trial judge reduced the punitive award to \$3.5 billion, resulting in a punitive to compensatory ratio of 55.<sup>32</sup>

The next category in Figure 1 pertains to cases that were settled. In all, twenty-two cases were settled, but this tally includes Case 59, *In re New Orleans Tank Car Leakage Fire Litigation*, which appears as a settled case for all but one defendant and as a case that—for one of the defendants in the case—led to an appeal, a reduction in punitive damages, and a subsequent

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<sup>31</sup> Susan Warren, *Exxon Verdict Reflects Wider Anger: Judgment of \$11.9 Billion in Alabama Underscores Distrust of Companies*, WALL ST. J., Nov. 17, 2003, at A6.

<sup>32</sup> Thaddeus Herrick, *Judge Cuts Verdict Against Exxon in Alabama Case*, WALL ST. J., Mar. 30, 2004, at A6.



appeal. Thus, this is the only case in Figure 1 that appears in two different locations.

The settlement amount in these cases is difficult to compare to the initial punitive damages award. For fifteen of the twenty-two cases the settlement amount is confidential. In one instance, *Rubicon Petroleum, Inc. v. Amoco Production Co.*, the settlement amount is an estimated 10% of the \$500 million verdict. For seven of the twenty-two cases the total settlement amount is known. However, the split of the settlement amount between punitive damages and the allocation for compensatory damages is not known. There were settlement values of \$60 million for *Tennessee Gas Pipeline v. KCS Resources, Inc.*, \$7.5 million for *The Robert J. Bellott Insurance Agency, Inc. v. State Farm Mutual Automobile Insurance Co.*, \$20 million for *Fuqua v. Horizon/CMS Healthcare Corp.*, \$242 million for *Igen International, Inc. v. Roche Diagnostics GmbH*, and \$23 million for *Beckman Coulter, Inc. v. Flextronics International Ltd.*

The final categories in Figure 1 include one case that was reduced by the trial judge, two cases in which there has been no payment made to the plaintiff and no appeal of the case, and two cases for which there is no information available. One of the no-payment cases, *Perez v. William Recht Co.*, involved defendants that are out of the business. The second no-payment case involves a fugitive killer who has been extradited from France to the United States, but there is no payment that has yet been made in *Maddux v. Einhorn*.

The overall pattern that emerges from Figure 1 is that the disposition of the blockbuster punitive damages awards does not fit any single simple pattern, such as for each case appealed, the verdict is reversed or reduced to modest levels. Many cases are appealed, but many of these are settled, and even in cases in which the punitive damages are reduced, the damages often remain substantial. In addition, a considerable share of cases are settled out-of-court before any appeal, and larger punitive damages awards tend to increase the bargaining power of plaintiffs in any such negotiation. Because almost all these settlements are confidential, it is difficult to assess their ultimate economic effect. However, publicized settlement amounts are as high as \$3 billion, as in *Pennzoil v. Texaco*, and while courts reduce punitive damages awards by billions of dollars, the result is often still over \$100 million. The stakes remain considerable, even if not the original blockbuster amount.

### III. THE EFFECT OF *STATE FARM V. CAMPBELL*

The 2003 U.S. Supreme Court decision in *State Farm Mutual Insurance Co. v. Campbell*<sup>33</sup> potentially imposes the greatest structure to date on punitive damages. Whereas the Court previously had not specified a ratio of punitive damages to compensatory damages that was ideal, and still has yet to be that explicit, this recent decision did attempt to bring some discipline to setting punitive damages and did so by indicating ranges of acceptable ratios.

The main target that has emerged is that of single-digit ratios: "Our 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."<sup>34</sup> The Court went on to observe that for the punitive damages award cases in which there are substantial compensatory damages as well, one would expect the ratio generally to be much lower than a ratio of 9.0: "When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee."<sup>35</sup>

Based on these observations as well as related statements in the Supreme Court decision, the empirical analysis below will focus on the implications of admissible ratios of punitive damages of 1.0 and 9.0, reflecting the two different ratios indicated by the Court. These were not, however, the only ratios discussed, as the decision also commented on other ratios such as treble damages rules, as well as previous court decisions that permitted ratios greater than 1.0: "In *Haslip*, in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety."<sup>36</sup>

Despite these various types of numerical guidelines provided by the Court, there were also exceptions indicated whereby a high punitive to compensatory damages ratio may not be indicative of an excessive award if compensatory damages are sufficiently small.<sup>37</sup> It is not clear whether plaintiffs' attorneys

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<sup>33</sup> 538 U.S. 408 (2003).

<sup>34</sup> *Id.* at 425.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (citing *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991)).

<sup>37</sup> *See id.* In particular, the Court observed: "Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may comport

will be successful in claiming that compensatory damages amounts are small in relationship to the overall harm that has been inflicted, thus avoiding the limiting effect of the opinion.

The effect of *State Farm* on these blockbuster punitive damages awards was almost immediate. The first blockbuster award after this decision was in *Beckman Coulter Inc. v. Flextronics International Ltd.* That case led to a punitive damages award of \$931 million, which had a punitive to compensatory damages ratio of 321. Within two months after this verdict, the parties settled the case for \$23 million.<sup>38</sup> The case involved a compensatory damages amount of \$2.9 million so that a settlement of \$23 million implies an approximate punitive damages settlement value of \$20.1 million, for a ratio of punitive damages to compensatory damages of 6.9. This value is within the U.S. Supreme Court guidelines of an upper-limit single-digit ratio, whereas the original ratio of 321 would be clearly inconsistent with the Court's guidelines.

The decision and the appeal of *Romo v. Ford Motor Co.*<sup>39</sup> also took place after *State Farm* and was strongly influenced by the guidance provided in that case. The original punitive to compensatory damages ratio was 54.7. The California Court of Appeal made repeated references to *State Farm* in overturning the original punitive damages award. Included among the observations of the court were the following:

First, we conclude *State Farm*'s constitutionalization of the historical, pre-*Grimshaw* punitive damages doctrines as part of federal due process means that the jury was fundamentally misinstructed concerning the *amount* of punitive damages it could award in the present case . . . . Accordingly, plaintiffs' counsel argued that the award should be large enough to force Ford to recall all remaining 1978–1979 Broncos still on the road and “crush them to dust.” Counsel argued that \$1 billion was the appropriate award, based on the profit Ford made on all 1978–1979 Broncos, factored to reflect Ford's use of that money over the next twenty years. Finally, counsel requested \$1 billion so the resulting publicity would reach all remaining owners of this model Bronco so they would know how dangerous the vehicle was. These considerations are impermissible under *State Farm* and plaintiffs' arguments served to magnify the

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with due process where ‘a particularly egregious act has resulted in only a small amount of economic damages.’” *Id.* (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 582 (1996)).

<sup>38</sup> Scott Thurm, *Flextronics Will Pay \$23 Million to Beckman To Settle a Lawsuit*, WALL ST. J., Nov. 28, 2003, at B3.

<sup>39</sup> 113 Cal. App. 4th 738 (2003).

impact of the misinstruction . . . . For reasons described above, we do not believe that the deathly harm component of the punitive award in the present case is strictly constrained by the single-digit multiplier set forth in *State Farm*. Nevertheless, we note the overall punitive damages award we find appropriate after independent review, \$23,723,287, is approximately five times the total compensatory damages award in this case.<sup>40</sup>

Why the *Romo* Court adopted a ratio of 5:1 rather than some other ratio is not clearcut. While the court did discuss reasons for diverging from a 1:1 ratio, there is no explicit guidance given in *State Farm* that would enable any court or jury to map their concerns into a particular punitive ratio above one but not exceeding nine. The parties subsequently settled this case for \$23.7 million.<sup>41</sup>

Interestingly, in the appeal of the *Exxon Valdez* oil spill case that took place after *State Farm*, the importance of the punitive damages/compensatory damages ratio in conjunction with the limits imposed by *State Farm* led to a dispute over the value of compensatory damages, which is the denominator in the ratio. Higher values of compensatory damages will make higher values of punitive damages conform to any given ratio value. The plaintiffs in this case claimed compensatory damages of \$517.2 million, and the defendant claimed the compensatory damages were \$20.3 million. The judge selected a value of \$507 million, with the result being that a \$5 billion punitive award would not exceed a 10:1 ratio.<sup>42</sup>

If *State Farm* exerts a disciplinary role, it is likely to constrain some of the wildest excesses of punitive damages in excess of compensatory damages, so long as compensatory damages can be reasonably well defined. To the extent that these and other cases fall into line with the guidance provided by *State Farm*, one would expect a potentially dramatic effect on the permitted level of punitive damages awards.

To examine the effect of the ratio limits of an upper limit of nine and a lower limit of one for the punitive to compensatory damages ratio, Table 6 presents the influence of such limits for the blockbuster award cases excluding the class action case *Engle v. R.J. Reynolds Tobacco Co.* In addition, Table 6 also reports the effect of these guidelines on a large sample of state court punitive damages awards drawn from the Civil Justice Survey of State Courts,

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<sup>40</sup> *Id.* at 753–62.

<sup>41</sup> *Ford To Pay*, *supra* note 30.

<sup>42</sup> John W. DeGravelles, *Uncertain Seas for Maritime Punitive Damages*, TRIAL, Jan. 1, 2004, at 50.

1996.<sup>43</sup> The punitive damages in state courts are much more modest in scale than the blockbuster awards. The median punitive damages award was \$50,000 in jury trials and \$33,000 in bench trials.<sup>44</sup> The first ratio limit indicated in Table 6 is the single-digit ratio of 9.0. If that were the cap on punitive damages, it would reduce the total blockbuster awards from \$70.3 billion to \$14.2 billion. Only 20% of the awards and 43% of the cases would be under that limit. If, however, a ratio limit of 1 were imposed, only 9% of the awards and 8% of the cases in the blockbuster category would meet the test.

For the state court sample shown in the final column of Table 6, the ratio limit of 9.0 is less constraining because the typical punitive damages award in state courts tends to have a lower ratio than do the blockbuster awards. Thus, 96% of the punitive damages awards in state courts would be under the ratio limit of 9.0. However, because the larger damages cases tend to fail the test, only forty-three of the total punitive damages awards meet the test.

If the ratio limit were reduced to 1.0, there would be a much more constraining effect in terms of the percentage of awards that would be permitted. The blockbuster awards meeting this cutoff drop to 9% of total awards and 8% of total cases. There is a similar dramatic effect on the representative state court sample, as only 6% of the total award amounts are under a cap of 1.0 even though 71% of the cases met that cutoff.

How different levels of permissible ratio caps would affect the blockbuster awards is illustrated in Figure 2. This figure explores ratio cap values ranging from 1 to 20, thus starting at the lower end of the U.S. Supreme Court's guidelines and going to a value that is more than twice the single-digit ratio limit. The darker bars in the figure indicate the fraction of cases that will be under various punitive damages limits. Thus, for any punitive damages to compensatory damages ratio on the horizontal axis, the dark bars indicate the fraction of cases that have a punitive damages to compensatory damages ratio that is not in excess of that value. The fraction of cases that will be below any given ratio limit rises fairly steadily from under 10% for a limit of 1.0, to about 40% for a limit of 7.0, to over 50% once the limit hits 18.0.

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<sup>43</sup> The discussion in the remainder of this section uses results calculated using this data set, as discussed in Hersch & Viscusi, *supra* note 13.

<sup>44</sup> *Id.*; see *id.* at 13 tbl.2.

The light bars in Figure 2 indicate the fraction of total punitive damages award values in the blockbuster sample that have a punitive damages to compensatory damages ratio at or below the ratio indicated on the horizontal axis. The amount of punitive damages awards in the blockbuster category that will be permitted as the ratio limit is increased is a much flatter relationship than is the relationship of the fraction of cases to the ratio limit. Thus, close to 10% of the punitive damages award amounts would be permitted with a ratio of 1.0, and this figure does not reach 20% until a ratio of 9.0. Even if the permitted ratio is increased to a value as high as 20.0, only 30% of the awards in the blockbuster category would meet the test. Blockbuster awards by their very nature tend to be outliers and usually have a high ratio of punitive to compensatory damages.

It is apparent that almost any reasonable ratio for the blockbuster cases will have a dramatic effect on the total dollar value represented by the blockbuster awards that far exceeds its influence on the fraction of cases. The reason for this relative impact is that the blockbuster awards tend to have a disproportionate number of cases in which the ratio of punitive damages to compensatory damages is wildly excessive given the existing guidance of reasonableness that the courts have provided.

Figure 3 presents analogous effects for the large 1996 sample of state court awards. Thus, Figure 3 indicates the fraction of cases with punitive award complying with different permitted ratios and the fraction of total punitive damages awards represented by cases in compliance with different permitted ratios. The results for the state court sample indicate that at very low values, a very large fraction of cases will be under the cap but only a very small portion of the total punitive awards. These cases are of more modest scale than the blockbuster cases and often do not have punitive damages awards that do not exceed compensatory damages, whereas the opposite is true for the blockbuster cases.

What is most remarkable about the results in Figure 3 is that for the state court sample, the choice of the punitive damages to compensatory damages ratio limit has an almost negligible effect on the fraction of cases affected or the fraction of total damages awards affected for ratios ranging from 8 to 20. At a permissible ratio near the upper end of the single digit limit, just over 40% of total punitive damages awards, and over 90% of the cases, would not violate the constraint. If, however, the U.S. Supreme Court in *State Farm* had specified that the upper limit should be 20, then the practical result in Figure 3

for state cases would be unchanged from the guidance they did provide. In contrast, the fraction of punitive damages awards for blockbuster cases that would be unaffected by a cap of 20.0 is about 50% greater than the amount that would be unaffected by a single-digit ratio cap.

The inquiry thus far has focused on the fraction of the blockbuster awards and state court awards that would meet the test imposed by different values of the cap. However, the operational significance of a cap, if enforced, is a bit different. Awards with punitive damages to compensatory damages ratios under the cap presumably will be unaffected if we can assume that the cap is a well-defined constraint. Yet, awards in excess of the cap will not simply disappear. In the previous tallies of punitive damages awards under the cap in Figures 2 and 3, all punitive awards with ratios above the cap, in effect, counted as zero. They did not contribute to the share of total award values currently under the cap. However, if the courts begin to impose cap values, the practical result will not be that these cases will have no punitive damages. Some punitive damages values may get reduced or overturned on appeal or lead to settlements. For concreteness, suppose that the punitive damage awards in excess of the capped value are reduced to a level so that the cap constraint is met exactly. Thus, if there were a maximum permitted punitive damages to compensatory damages ratio of 1.0, the punitive damages amount in *Hedrick v. Sentry Insurance Co.* will decrease from its actual award level of \$100 million to \$2.17 million, which is the value of compensatory damages in the case. For a binding ratio cap of two in this case, the punitive award will be reduced to \$4.34 million. Thus, even though the punitive award may violate higher values of the cap, as the permitted ratio of punitive damages to compensatory damages is increased, plaintiffs will get to keep more of their punitive award. Undertaking a similar analysis for all the blockbuster cases and overall state court cases considered previously, what fraction of total awards will still be permitted under different cap levels?

Figure 4 illustrates how the fraction of total awards that will be imposed varies with different punitive damages caps. In each instance a larger share of the state court sample of awards is imposed irrespective of the value of the cap. Moreover, both of those award components indicate a steadily rising total damages cost as the cap is raised. For a cap of 1.0, approximately 13% of the blockbuster awards and over 26% of state punitive awards will be imposed. With an upper limit of a ratio of 9.0, 30% of the cost of blockbuster awards will be imposed and 63% of the state court award cost will be imposed. By the time the ratio limit equals 20.0, over 87% of the state court award cost and

about 40% of the blockbuster award cost will be imposed if the cap serves as a binding constraint.

In each instance, the total award cost that will be imposed as a result of a cap, as shown in Figure 4, is much more sensitive to the choice of the cap than is the fraction of all awards that will lie under different values of the cap, as shown in Figures 2 and 3. The reason for the difference is that in Figure 4 every increase in the value of the cap boosts the amount of punitive damages that could be levied for all cases above the cap but are now reduced to a value equal the cap. However, in Figures 2 and 3 the only matter of concern was which awards were already under the cap rather than how total awards would change if violators of the cap were brought into compliance with the cap.

### CONCLUSION

The blockbuster punitive damages awards have generated substantial attention in the media and in appellate decisions for good reason. Award levels in the hundreds of millions of dollars, and with increasing frequency in the billions of dollars, impose substantial economic costs. In some cases, these awards could threaten the economic viability of the defendant as a result of only a single case.

These excessive awards may be concentrated on particular industries, thus decreasing the viability of firms marketing risky products. Individual cigarette smoker cases have generated punitive damages amounts of \$28 billion, \$3 billion, and \$150 million. With an estimated 400,000 smokers dying per year from smoking-related illnesses, these stakes could become quite substantial. Tobacco class actions have generated punitive awards of \$145 billion and \$7.1 billion.

The actual economic cost of these awards that is ultimately imposed is almost invariably less than the punitive damages award level. Some of these verdicts are reduced on appeal, while others are settled for an amount less than the value of the actual award. However, examination of the current status of punitive damages awards indicates that it is certainly not true that appeals and settlements reduce the stakes of these punitive damages awards to an inconsequential amount. Even awards reduced on appeal can be \$100 million or more.

The punitive damages landscape is likely to be substantially different in the wake of *State Farm*. To the extent that punitive damages are not permitted to



exceed the value of compensatory damages, such a ratio will affect more than 90% of total blockbuster award amounts and 90% of all blockbuster award cases. If, however, the effective punitive damages cap is a single-digit ratio, there will be less of a constraining effect. Moreover, if plaintiffs are able to argue successfully that the compensatory damages in their cases are “small” so that a higher ratio is warranted, then the restraining effect of *State Farm* will be diminished.

Suggested ratio caps and other forms of judicial discipline—almost by their very nature—have some kind of arbitrary element that does not supplant the need for a rational basis for setting punitive awards. Ultimately, punitive damages will not function in a constructive manner until either juries are given instructions that enable them to set punitive damages in a sensible manner or the responsibility for setting the level of punitive damages is transferred to judges. The main lesson of the blockbuster awards sample is that, in many instances, juries have not received the guidance needed to enable them to set punitive damages in a sensible manner. The result that we observe is punitive to compensatory damages ratios as high as 1683, leading to punitive damages amounts in the billions in a situation in which the compensatory damages were only \$2 million.

Experimental studies that have examined the process by which jurors arrive at these punitive damage verdicts indicate that jurors are susceptible to a wide variety of biases, such as the influence of possibly irrelevant anchors used to frame their thinking about punitive damages award amounts. The California appeals court decision in *Romo v. Ford Motor Co.* indicates that the *State Farm* decision has already led courts to become more attuned to efforts by plaintiffs’ attorneys to provide anchors that would lead juries to make awards in violation of the guidance of *State Farm*. Further improvements in jury instructions that enable jurors to approach punitive damages in a manner consistent with *State Farm* will undoubtedly enhance the performance of juries and reduce the excesses reflected in the blockbuster award amounts. The long-term task is not only to eliminate the most extreme excesses but also to provide a workable methodology for setting reasonable levels of punitive damages awards.

Table 1: The Blockbuster Punitive Damages Awards of at Least \$100 Million

<i>Case Name</i>	<i>Year of Decision</i>	<i>Punitive Damages Award (\$ Millions)</i>	<i>Compensatory Damages Award (\$ Millions)</i>	<i>Ratio of Punitive Damages to Compensatory Damages</i>
<b>Bench Punitive Awards</b>				
Smith v. Delta TV Corporation (Mississippi)	1995	167.00	0.50	334.0
Avery v. State Farm Mutual Insurance Automobile Co. (Illinois)	1999	600.00	130.00	4.6
Miles v. Philip Morris Inc. (Illinois)	2003	3,100.00	7,100.00	0.4
<b>Jury Punitive Awards</b>				
Hedrick v. Sentry Insurance Co. (Texas)	1993	100.00	2.17	46.1
Forti v. General Dynamics Corp. (California)	1996	100.00	7.40	13.5
Hardy v. General Motors Corp. (Alabama)	1996	100.00	50.00	2.0
Aaron v. Abex Corp. (Texas)	1998	100.00	15.60	6.4
Aultman v. Duncan Manufacturing (Alabama)	1999	100.00	14.50	6.9
City of West Allis v. Wisconsin Electric Power Co. (Wisconsin)	1999	100.00	4.50	22.2
Dorman v. Bridgestone/Firestone Inc. (Missouri)	2000	100.00	5.00	20.0
Timely Adventures Inc. v. Coastal Mart Inc. (Texas)	2000	100.00	2.10	47.6
Moseley v. General Motors Corp. (Georgia)	1993	101.00	4.24	23.8

<i>Case Name</i>	<i>Year of Decision</i>	<i>Punitive Damages Award (\$ Millions)</i>	<i>Compensatory Damages Award (\$ Millions)</i>	<i>Ratio of Punitive Damages to Compensatory Damages</i>
Tennessee Gas Pipeline Co. v. KCS Resources Inc. (Texas)	1996	114.09	29.00	3.9
Goodrich v. Aetna U.S. Healthcare of California Inc. (California)	1999	116.00	4.50	25.8
Robinson v. Ford Motor Co. (Mississippi)	1998	120.00	24.88	4.8
Alcorn v. National Railroad Passenger Corp. (Missouri)	1999	120.00	40.40	3.0
Carroll v. Interstate Brands Corp. (California)	2000	121.00	11.00	11.0
Proctor v. Davis and Upjohn Co. (Illinois)	1991	124.57	3.15	39.5
Micro/Vest v. ComputerLand (California)	1985	125.00	400.00	0.3
Martin v. ServiceMaster Co. L.P. (Georgia)	1999	135.00	1.26	107.1
Martin v. Children's Advanced Medical Institutes (Texas)	2000	137.00	131.60	1.0
50-Off Stores, Inc. v. Banque Paribas (Suisse), S.A. (Texas)	1997	138.00	12.90	10.7
Campbell v. State Farm Mutual Automobile Insurance Co. (Utah)	1996	145.00	2.60	55.8
In Re: Technical Equities Litigation (California)	1988	147.00	7.00	21.0
Coyne v. Celotex Corp. (Maryland)	1989	150.00	2.00	75.0
Broussard v. Meineke Discount Muffler Shops Inc. (North Carolina)	1996	150.00	196.96	0.8
Robert J. Bellott Insurance Agency Inc. v. State Farm Mutual Automobile Insurance Co. (Alaska)	1999	150.00	2.70	55.6

<i>Case Name</i>	<i>Year of Decision</i>	<i>Punitive Damages Award (\$ Millions)</i>	<i>Compensatory Damages Award (\$ Millions)</i>	<i>Ratio of Punitive Damages to Compensatory Damages</i>
Schwarz v. Philip Morris Cos. (Oregon)	2002	150.00	0.17	882.4
Claghorn v. Edsaco (California)	2002	165.00	5.70	28.9
Dominguez Energy L.P. v. Shell Oil Co. (California)	1993	173.00	46.88	3.7
Bartlett v. Mitchell Energy Corp. (Texas)	1996	200.00	4.05	49.4
MMAR. v. Dow Jones (Texas)	1997	200.00	22.70	8.8
City of Hope National Medical Center v. Genentech (California)	2002	200.00	300.10	0.7
Steele Software Systems Corp. v. First Union (Maryland)	2002	200.00	76.00	2.6
Whittington v. U.S. Steel (Illinois)	2003	200.00	50.00	4.0
Houchens v. Rockwell International Corp. (Kentucky)	1996	210.00	7.70	27.3
Rubicon Petroleum Inc. v. Amoco Production Co. (Texas)	1993	250.00	125.00	2.0
Jimenez v. DaimlerChrysler Corp. (South Carolina)	1997	250.00	12.50	20.0
Six Flags Over Georgia L.L.C. v. Time Warner Entertainment Co. L.P. (Georgia)	1998	257.00	197.00	1.3
Romo v. Ford Motor Co. (California)	1999	290.00	5.30	54.7
Perez v. William Recht Co., Inc., dba Durex Industries Inc. (Florida)	1995	300.00	200.00	1.5
Fuqua v. Horizon/CMS Healthcare Corp. (Texas)	2001	310.00	2.71	114.4

<i>Case Name</i>	<i>Year of Decision</i>	<i>Punitive Damages Award (\$ Millions)</i>	<i>Compensatory Damages Award (\$ Millions)</i>	<i>Ratio of Punitive Damages to Compensatory Damages</i>
Maryland Deposit Insurance Fund v. Seidel (Maryland)	1988	322.00	65.00	5.0
Pioneer Commercial Funding Corp. v. American Financial Mortgage Corp. (Pennsylvania)	2000	337.50	14.50	23.3
COC Services Ltd. v. CompUSA Inc. (Texas)	2001	364.50	90.00	4.1
Amoco Chemical Co. v. Certain Underwriters at Lloyd's of London (California)	1993	386.40	36.00	10.7
O'Keefe v. Loewen Group Inc. (Mississippi)	1995	400.00	100.00	4.0
Cassott v. Cessna Aircraft Co. (Florida)	2001	400.00	80.00	5.0
IGEN International Inc. v. Roche Diagnostics GmbH (Maryland)	2002	400.00	105.00	3.8
Carlisle v. Whirlpool Financial National Bank (Alabama)	1999	580.00	0.98	594.9
Maddux v. Einhorn (Pennsylvania)	1999	752.00	155.00	4.9
Lockheed Litigation Cases, Judicial Council Coordination Proceeding, 2967 (California)	1998	760.00	25.40	29.9
Beckman Coulter Inc. v. Flextronics International Ltd. (California)	2003	931.00	2.90	321.0
Cowart v. Johnson Kart Manufacturing Inc. (Wisconsin)	1999	1,000.00	24.00	41.7
Grefer v. Alpha Technical Services Inc. (Louisiana)	2001	1,000.00	56.13	17.8
Hayes v. Courtney (Missouri)	2002	2,000.00	225.00	8.9

Case Name	Year of Decision	Punitive Damages Award (\$ Millions)	Compensatory Damages Award (\$ Millions)	Ratio of Punitive Damages to Compensatory Damages
Pennzoil Co. v. Texaco Inc. (Texas)	1985	3,000.00	7,530.00	0.4
Boeken v. Philip Morris Inc. (California)	2001	3,000.00	5.54	541.6
In re New Orleans Tank Car Leakage Fire Litigation (Louisiana)	1997	3,365.00	2.00	1,682.5
Exxon Corp. v. Department of Conservation and Natural Resources (Alabama)	2000	3,420.00	87.70	39.0
Anderson v. General Motors Corp. (California)	1999	4,775.00	107.60	44.4
In re: The Exxon Valdez (Alaska)	1994	5,000.00	287.00	17.4
Bullock v. Philip Morris Inc. (California)	2002	28,000.00	0.65	43,076.9
Engle v. R.J. Reynolds Tobacco Co. (Florida)	2000	145,000.00	12.70	11,417.3

Source: Joni Hersch & W. Kip Viscusi, *Punitive Damages: How Judges and Juries Decide*, 33 JOURNAL OF LEGAL STUDIES 1 (2004). One additional case has been added to that list.

Notes: The list of cases was compiled by search of various sources as described in Hersch and Viscusi, *supra*. The information for most cases is reported in *The National Law Journal*. Information for *Hayes v. Courtney, Maryland Deposit Insurance Fund v. Seidel*, and *Maddux v. Einhorn* is based on reports in the *New York Times*. Information on *Clayton Smith v. Delta* is reported in the American General Financial, Inc. 1999 10-K form. The compensatory damages amount in *Micro/Vest v. ComputerLand* is 20% of the value of the stock, which plaintiffs estimated to be worth \$400 million. For *Bartlett v. Mitchell Energy Corp.* we include the exemplary damages value of \$200 million. under the punitive damages heading. *Id.*

Table 2: Blockbuster Punitive Damage Awards by State

State	Number of Cases	Punitive Damages (\$ Millions)	2003 State Population	Punitive Damages per Capita
California	15	39,289	35,484,453	1107
Texas	12	5014	22,118,509	227
Alabama	4	4200	4,500,752	933
Illinois	4	4025	12,653,544	318
Maryland	4	1072	5,508,909	195
Florida	3	145,700	17,019,068	8561
Missouri	3	2220	5,704,484	389
Mississippi	3	687	2,881,281	238
Georgia	3	493	8,684,715	57
Arkansas	2	5150	648,818	7938
Louisiana	2	4365	4,496,334	971
Wisconsin	2	1100	5,472,299	201
Pennsylvania	2	1090	12,365,455	88
South Carolina	1	250	4,147,152	60
Kentucky	1	210	4,117,827	51
North Carolina	1	150	8,407,248	18
Oregon	1	150	3,559,596	42
Utah	1	145	2,351,467	62
Total	64	215,309	160,121,911	1345

Table 3: Time Trends in Blockbuster Awards

Time Period	Number of Awards	Total Amount (\$ Millions)
Pre-1989	4	3594
1989-1993	7	1285
1994-1998	19	12,076
1999-2003	34	198,354
Total	64	215,309



Table 4: Simple Regression Results for Punitive Damages Awards<sup>1</sup>

	Coefficient (Standard Error)
<u>Panel A: Dependent variable:</u> <u>punitive damages</u> <i>Explanatory variables</i>	
Compensatory damages	0.271 (0.359)
Constant	1037.328** (470.015)
Adjusted R-squared	-0.01
<u>Panel B: Dependent variable:</u> <u>log (punitive damages)</u> <i>Explanatory variables</i>	
Log (compensatory damages)	0.163** (0.073)
Constant	5.284** (0.270)
Adjusted R-squared	0.06

<sup>1</sup>Sample is comprised of jury trials from Table 1, excluding *Engle v. R.J. Reynolds Tobacco Co.*

\*\* (\*) indicates coefficient is significantly different from zero at 1% (5%) level, two-sided tests.

Table 5: The Current Status of the Blockbuster Punitive Damages Awards

Case	Reference	Current Status	Comment
1 Smith v. Delta TV Corp. (Mississippi)		No information	
2 Avery v. State Farm Mut. Auto. Ins. Co. (Illinois)	Avery v. State Farm Mut. Auto. Ins. Co., 321 Ill. App. 3d 269 (2001); Daniel C. Vock, <i>High Court Urged To Void \$1 Billion Judgment</i> , CHI. DAILY L. BULL., May 14, 2003, at 1.	Punitive affirmed by appeals court; appeal pending in Illinois Supreme Court	Arguments heard before Illinois Supreme Court, no opinion yet issued.
3 Price v. Philip Morris, Inc. (Illinois) ( <i>previously</i> Miles v. Philip Morris Inc.)	Price v. Philip Morris, Inc., 341 Ill. App. 3d 941 (2003); <i>Moody's Confirms Altria and Kraft—Kraft's Outlook Changed to Stable—Altria's Outlook Negative</i> , MOODY'S INVESTOR SERVICE PRESS RELEASE, Sept. 18, 2003; Ameet Sachdev, <i>Philip Morris Battles Hard To Stamp Out 'Lights' Suits</i> , CHI. TRIB., Mar. 17, 2004, at 1.	Under appeal.	
4 Hedrick v. Sentry Insurance Co. (Texas)	<i>Settlements: Verdicts Reached Before 1994</i> , NAT'L L.J., Feb. 6, 1995, at C15.	Settled	Settled for a confidential amount.
5 Forti v. Gen. Dynamics Corp. (California)	<i>Verdicts: The Big Numbers of 1996: A Special Supplement</i> , NAT'L L.J., Feb. 10, 1997, at C4.	Under appeal	Punitive reduced to \$30 million.
6 Hardy v. Gen. Motors Corp. (Alabama)	<i>Major Defense Verdicts: A Roundup of Significant 1996 Cases</i> , NAT'L L.J., Mar. 24, 1997, at A15.	Settled	Settled for a confidential amount.

Case		Reference	Current Status	Comment
7	Aaron v. Abex Corp. (Texas)	<i>Settlements Reached After Trial</i> , NAT'L L.J., Feb. 22, 1999, at C20.	Settled	Settled for a confidential amount.
8	Aultman v. Duncan Mfg. (Alabama)	Margaret Cronin Fisk, <i>7,600 Volts Equals \$14 M Verdict: High-Low Agreement Forestalls Appeal Over Ala. Worker's Mishap</i> , NAT'L L.J., Nov. 22, 1999, at A10.	Settled	Settled based on a confidential high low agreement reached before verdict.
9	City of W. Allis v. Wis. Elec. Power Co. (Wisconsin)	Dee McAtee, <i>Woodchip Award Is Whittled: \$100 Million Judgment Is Thrown Out; A Plaintiff Agrees to \$8.7 Million</i> , NAT'L L.J., June 10, 2002, at A6.	Settled	Settled with both plaintiffs for \$8.65 million each when the Wisconsin Supreme Court sent the case back for retrial.
10	Dorman v. Bridgestone/Firestone Inc. (Missouri)	<i>Settlements Reached After Jury Verdict: A Tire's Side Ring Was Defectively Designed</i> , NAT'L L.J., Feb. 19, 2001, at C21.	Settled	Settled after mediation for a confidential amount.
11	Timely Adventures Inc. v. Coastal Mart Inc. (Texas)	Coastal Mart, Inc. v. Timely Adventures, Inc., 2002 Tex. App. LEXIS 1941 (Mar. 14, 2002).	Settled	Settled for a confidential amount.
12	Moseley v. Gen. Motors Corp. (Georgia)	Andrew Blum, <i>GM Settles Suits; Turnoil Remains: Plaintiffs Say Automaker Hides Truth About Trucks</i> , NAT'L L.J., Sept. 25, 1995, at A6.	Settled	Settled for a confidential amount.

Case	Reference	Current Status	Comment
13 Tenn. Gas Pipeline Co. v. KCS Res. Inc. (Texas)	<i>The Big Numbers of 1996, Verdicts: A Special Supplement; Settlements Reached After Trial</i> , NAT'L L.J., Feb. 10, 1997, at C12.	Settled	Settlement for case estimated at \$60 million.
14 Goodrich v. Aetna U.S. Healthcare of Cal. Inc. (California)	<i>"Weeping Widow" Case Settled</i> , CONN. L. TRIB., Apr. 30, 2001, at 6.	Settled	Settled for a confidential amount.
15 Robinson v. Ford Motor Co. (Mississippi)	<i>Verdicts: The Big Numbers of 1998: Settlements Reached After Trial</i> , NAT'L L.J., Feb. 22, 1999, at C20.	Settled	Settled for a confidential amount.
16 Alcom v. Nat'l R.R. Passenger Corp. (Missouri)	<i>Margaret Cronin Fisk, Jury Took a Poor View of Rail Company's Track Record</i> , NAT'L L.J., Feb. 28, 2000, at C13.	Punitive reduced	Punitive reduced to \$50 million by trial judge.
17 Carroll v. Interstate Brands Corp. (California)	<i>Wonder Bread Verdict Sliced</i> , NAT'L L.J., Oct. 23, 2000, at A6.	Punitive reduced (possibly under appeal)	Punitive reduced to \$24.3 million. Defense plans to appeal.
18 Proctor v. Davis (Illinois)	Proctor v. Davis, 291 Ill. App. 3d 265 (1997).	Punitive reduced	The appellate court reduced the punitive damages to approximately \$6.1 million.
19 Micro/Vest v. ComputerLand (California)	Brenton R. Schlender, <i>California Court Upholds Awarding of ComputerLand Stake to Micro/Vest</i> , WALL ST. J., Jan. 3, 1989, at B5.	Award waived for stock	The damages award was waived for additional 8.5% of ComputerLand stock.

Case	Reference	Current Status	Comment
20 Martin v. ServiceMaster Co. L.P. (Georgia)	ServiceMaster Co. v. Martin, 556 S.E.2d 517 (Ga. Ct. App. 2001); W. Melvin Haas, III et al., <i>Labor &amp; Employment Law</i> , 54 MERCER L. REV. 369, 382-83 (2002).	Reversed and remanded for determination of compensatory damages	Punitives reversed.
21 Martin v. Children's Advanced Med. Inst. (Texas)	\$268,680,000 <i>Verdict In Suit Alleging Overdose of Anesthetic</i> , 21 No. 2 VST 64.	Settled	Settled for a confidential amount.
22 50-Off Stores, Inc. v. Banque Paribas (Suisse), S.A. (Texas)	50-Off Stores, Inc. v. Banques Paribas (Suisse), S.A., 180 F.3d 247 (5th Cir. 1999), <i>cert. denied</i> 528 U.S. 1078 (2000).	Reversed	Court of Appeals, 5th Circuit reversed the order on punitive damages.
23 Campbell v. State Farm Mut. Auto. Ins. Co. (Utah)	State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003).	Reversed, remanded	Award on punitive damage reversed by U.S. Supreme Court and remanded.
24 <i>In re</i> Technical Equities Litig. (California)	<i>Verdicts: The Big Numbers of 1994: Reversals: Verdicts Reversed by Judges</i> , NAT'L L.J., Feb. 6, 1995, at C14.	Settled	The case was settled for a confidential amount after the judgment was reversed.
25 Coyne v. Celotex Corp. (Maryland)	<i>Verdicts</i> , NAT'L L.J., Jan. 29, 1990, at S12.	Settled	Settled for a confidential amount.
26 Broussard v. Meineke Disc. Muffler Shops Inc. (North Carolina)	<i>Verdicts: The Big Numbers of 1998: Reversals: Verdicts Reversed After Trial</i> , NAT'L L.J., Feb. 22, 1999, at C18-19.	Settled	Settled for a confidential amount.

Case	Reference	Current Status	Comment
27 Robert J. Bellot Ins. Agency Inc. v. State Farm Mut. Auto. Ins. Co. (Alaska)	<i>Settlements Reached After Jury Verdict: Insurance Company Demanded Exclusivity</i> , NAT'L L.J., Feb. 28, 2000, at C19.	Settled	Settled case for \$7.5 million.
28 Schwartz v. Philip Morris Cos. (Oregon)	<i>False Claims Alleged for Low-Tar Cigarettes</i> , NAT'L L.J., Feb. 3, 2003, at C5.	Under appeal	Under appeal in the Oregon Court of Appeals.
29 Claghorn v. Edsaco (California)	<i>Big Punitives for Faking Sales of Bogus Software</i> , NAT'L L.J., Feb. 3, 2003, at C4; Benjamin Temchine, <i>Size of Verdicts Soars in California in 2002</i> , RECORDER (S.F.), Jul. 7, 2003, at 11.	Settled	Settled for a confidential amount.
30 Dominguez Energy L.P. v. Shell Oil Co. (California)	<i>Dominguez Energy L.P. v. Shell Oil Co.</i> , 1998 Cal. LEXIS 3898 (Jun. 17, 1998); <i>Verdicts: The Big Numbers of 1998: Reversals: Verdicts Reversed After Trial</i> , NAT'L L.J., Feb. 22, 1999, at C18-19.	Reversed	Reversed as a matter of law.
31 Bartlett v. Mitchell Energy Corp. (Texas)	<i>Mitchell Energy Corp. v. Bartlett</i> , 958 S.W.2d 430 (Tex. Ct. App. 1997).	Reversed	Punitives reversed.
32 MMAR Group Inc. v. Dow Jones (Texas)	<i>MMAR Group, Inc. v. Dow Jones &amp; Co.</i> , 187 F.R.D. 282 (S.D. Tex. 1999); <i>Reversals: Verdicts Overturned: Judge Disagreed With Jury on the Matter of Libel</i> , NAT'L L.J., Feb. 28, 2000, at C22-23.	Reversed	Punitives reversed and new trial granted. The plaintiffs dropped the case.

Case		Reference	Current Status	Comment
33	City of Hope Nat'l Med. Ctr. v. Genentech (California)	<i>Genentech Retrial Yields \$500 Million Outcome</i> , NAT'L L.J., Feb. 3, 2003, at C2.	Under appeal	
34	Steele Software v. First Union (Maryland)	<i>Baltimore Bank Loses to a Software Company</i> , NAT'L L.J., Feb. 3, 2003, at C2-3.	Under appeal	
35	Whittington v. U.S. Steel (Illinois)	<i>Tresa Baldas, The Art of Harnessing a Jury's Anger</i> , NAT'L L.J., Apr. 21, 2003, at B5.	Settled	Settled for a confidential amount.
36	Houchens v. Rockwell Int'l Corp. (Kentucky)	<i>Rockwell Int'l Corp. v. Wilhite</i> , 2003 Ky. App. LEXIS 193 (Ky. Ct. App. Aug. 8, 2003).	Reversed	Punitive reversed.
37	Rubicon Petroleum Inc. v. Amoco Prod. Co. (Texas)	<i>Verdicts: The Big Numbers of 1994: Settlements; Verdicts Reached Before 1994</i> , NAT'L L.J., Feb. 6, 1995, at C15.	Settled	Settled for a confidential amount (estimated to be 10% of the total verdict of \$500 million).
38	Jimenez v. DaimlerChrysler Corp. (South Carolina)	<i>Jimenez v. DaimlerChrysler Corp.</i> , 269 F.3d 439 (4th Cir. 2001)	Reversed	Punitive reversed and remanded.
39	Six Flags Over Georgia L.L.C. v. Time Warner Entm't Co. (Georgia)	<i>Time Warner Entm't Co. v. Six Flags Over Ga.</i> , 563 S.E.2d 178 (Ga. Ct. App. 2002); <i>cert. denied</i> 2002 Ga. LEXIS 835 (Sept. 16, 2002); <i>cert. denied</i> 538 U.S. 977 (2003).	Affirmed	Affirmed in March 2002.

Case	Reference	Current Status	Comment
40 Romo v. Ford Motor Co. (California)	Ford Motor Co. v. Romo, 538 U.S. 1028 (2003) (remanding the case); Romo v. Ford Motor Co., 113 Cal. App. 4th 738 (2003); Mike McKee, <i>Rules Shift Sharply in California; A Restriction on Punitive Damages</i> , NAT'L L.J., Dec. 1, 2003, at 42.	Reversed, remanded. On remand, punitives reduced to \$23.72 million.	Case remanded in light of State Farm v. Campbell, on remand, plaintiffs accepted remittitur on punitives to \$23.72 million.
41 Perez v. William Reicht Co. (Florida)	<i>Verdicts: The Big Numbers of 1995</i> , NAT'L L.J., Feb. 5, 1996, at C2.	No change	Defendants are out of business (judgment proof).
42 Fuqua v. Horizon/CMS Healthcare Corp. (Texas)	<i>Mock Trials, Major Verdict; Attorneys Prep for Nursing Home Case with Warm-Up Trials, Win \$312 Million</i> , NAT'L L.J., Feb. 4, 2002, at C17.	Settled	The whole case was settled for \$20 million.
43 Md. Deposit Ins. Fund v. Siedel (Maryland)			No information available.
44 Pioneer Commercial Funding Corp. v. Am. Fin. Mortgage Corp. (Pennsylvania)	Pioneer Commercial Funding, Corp. v. Amer. Fin. Mortgage Corp., 797 A.2d 269 (Pa. Super. Ct. 2002).	Remanded for new trial on issue of punitive damages.	Reduced to \$40.5 million by the trial court. On appeal, Superior Court of Pennsylvania remanded for a new trial on the issue of punitive damages.



Case	Reference	Current Status	Comment
45 COC Servs. Ltd. v. CompUSA Inc. (Texas)	<i>Business Headed South, then It Turned Sour</i> , NAT'L L.J., Feb. 4, 2002, at C6.	Under appeal (reversed against Halpin & CompUSA, reduced against Helu)	Trial court set aside the verdict against Halpin and CompUSA. Helu and his companies must pay \$90 million in punitive damages.
46 Amoco Chem. Co. v. Certain Underwriters at Lloyd's of London (California)	<i>Mealey's Seminar, Friday 16th November 2001</i> , MEALEY'S LITIG. REP. INS., Dec. 11, 2001, at 12; <sup>1</sup> Jordan Stanzler, <i>California Recent Developments in Bad Faith</i> , at <a href="http://www.inscobadfaith.net/news/california-recent-developments.html">http://www.inscobadfaith.net/news/california-recent-developments.html</a> (last visited May 10, 2004).	Reversed on appeal, then settled	Trial judge reduced punitive to \$70 million. Appeals court reversed for improper jury instructions. The case was settled for a confidential amount.
47 O'Keefe v. Loewen Group Inc. (Mississippi)	Willie E. Gary, <i>Front-Load Effort and Win Your Case: 'The Voir Dire Is the Most Important Part of the Trial' Because One Bad Juror Can Spoil Your Chance to Win</i> , NAT'L L.J., May 13, 1996, at D5.	Settled	The case settled. Loewen paid the plaintiff \$242 million as settlement for the whole case.

<sup>1</sup> According to Lloyd's Claims Director Scott Moser, "Companies we've settled with include, alphabetically, Allied Signal, Amoco, Boeing...." *Mealey's Seminar, Friday 16th November 2001*, MEALEY'S LITIG. REP. INS., Dec. 11, 2001, at 12. The outcome of this case is not, however, specifically cited.

Case	Reference	Current Status	Comment
48 Cassoutt v. Cessna Aircraft Co. (Florida)	<i>Cessna Aircraft Settles Seat-Rail Lawsuit</i> , WICHITA BUS. J., Mar. 22, 2002, at 11, available at <a href="http://www.bizjournals.com/wichita/stories/2002/03/11/daily50.html">http://www.bizjournals.com/wichita/stories/2002/03/11/daily50.html</a> .	Settled	The case settled for a confidential amount.
49 IGEN Int'l Inc. v. Roche Diagnostics GmbH (Maryland)	IGEN Int'l., Inc., v. Roche Diagnostics GmbH, 335 F.3d 303 (4th Cir. 2003).	Affirmed in part, reversed in part and remanded	U.S. Court of Appeals, 4th Circuit vacated both the punitive damages award and the compensatory damages award.
50 Carlisle v. Whirlpool Fin. Nat'l Bank (Alabama)	<i>Settlements Reached After Jury Verdict: Door-To-Door Sales Item Cost Nearly 800% More</i> , NAT'L L.J., Feb. 28, 2000, at C19.	Settled	The whole case settled for a confidential amount.
51 Maddux v. Einhorn (Pennsylvania)	Alan Fisk, <i>Pressing on for a Fugitive's Debt; Ira Einhorn Owes \$907 Million. But How Much Is Collectible?</i> , NAT'L L.J., Aug. 13, 2001, at A6.	No change	Fugitive killer extradited from France.
52 Lockheed Litig. Cases, Judicial Council Coordination Proceeding, 2967 (California)	In re Lockheed Litig. Cases, 2003 WL 1908886 (Cal. Ct. App. Apr. 22, 2003).	New trial	Court of Appeals, 2nd District, Division 3, California, affirmed the order for a new trial granted by the superior court.

Case	Reference	Current Status	Comment
53 Beckman Coulter Inc. v. Flextronics International Ltd. (California)	Scott Thurm, <i>Flextronics Will Pay \$23 Million to Beckman to Settle a Lawsuit</i> , WALL ST. J., Nov. 28, 2003, at B3.	Settled	The whole case was settled for \$23 million.
54 Cowart v. Johnson Kart Manufacturing Inc. (Wisconsin)	<i>Settlements Reached After Jury Verdict: Go-Kart Burns After Modified Gas Cap Falls Off</i> , NAT'L L.J., Feb. 28, 2000, at C19.	Settled	The whole case settled for a confidential amount.
55 Grefer v. Alpha Technical Services Inc. (Louisiana)	Sandra Barbier, <i>Harvey Site Retested in Clash Over Radiation; Defendants Sharing Samples with DEQ</i> , THE TIMES-PICAYUNE, Mar. 18, 2003, at O1.	Under appeal	Under appeal in the 4th Circuit Court of Appeals.
56 Hayes v. Courtney (Missouri)	David Twiddy, <i>Courtney's Insurer Will Pay \$35M to Settle Claims</i> , BUS. J. (KANSAS CITY), Nov. 25, 2003, at 9, <i>available at</i> <a href="http://kansascity.bizjournals.com/kansascity/stories/2003/11/24/daily18.html?l=printable">http://kansascity.bizjournals.com/kansascity/stories/2003/11/24/daily18.html?l=printable</a> .	Punitive reduced, settled.	The judge reduced punitive damages from \$2 billion to \$300 million; settled with insurer for \$35 million.
57 Pennzoil Co. v. Texaco Inc. (Texas)	Andrew Blum, <i>First Class Action Reaches Verdict: Asbestos Awards May Be Large</i> , NAT'L L.J., May 7, 1990, at 3.	Settled	Settled for \$3 billion in December 1987.

Case	Reference	Current Status	Comment
58 Boeken v. Philip Morris Inc. (California)	Boeken v. Philip Morris Inc., 2001 WL 1894403, at *1, 15 (Sup. Ct. L.A. County, Cal. Aug. 9, 2001); Margaret Cronin Fisk, <i>A Marlboro Man's Final Roundup</i> , NAT'L L.J., Feb. 4, 2002, at A1.	Punitive reduced, case on appeal.	The Superior Court, Los Angeles County, California reduced the punitive damages to \$100 million and conditioned the grant of a new trial on the ground of excessive punitive damages on plaintiff's acceptance of the reduction. Defendant is appealing the reduction.

Case	Reference	Current Status	Comment
59 <i>In re</i> New Orleans Tank Car Leakage Fire Litigation (Louisiana)	<p><i>In re</i> New Orleans Train Car Leakage Fire Litig., 795 So. 2d 364 (La. Ct. App. 2001); <i>A Massive Verdict from '97 Still Blazes Forth</i>, NAT'L L.J., Sept. 3, 2001, at C15; Alan Fisk, <i>Rail Fire Damages Will Stand: Louisiana Federal Court Upholds \$850 Million Award of Punitives</i>, NAT'L L.J., July 16, 2001, at A4.</p>	All but one defendant settled. Punitives reduced, on appeal to Louisiana Supreme Court.	All but one defendant settled the punitive damages awarded for a total of \$215 million. District Court of Louisiana reduced the punitive damages award of \$2.5 billion against CSX to \$850 million. Court of Appeal of Louisiana, 4th Circuit upheld the decision. CSX has appealed to Louisiana Supreme Court.

Case	Reference	Current Status	Comment
60 Exxon Corp. v. Department of Conservation and Natural Resources (Alabama)	<p>Susan Beck, <i>How O'Melveny &amp; Myers Built a Litigation Powerhouse: California-Born Firm Proves Itself on a National—and International—Stage</i>, LEGAL TIMES, Jan. 12, 2004, at 1; Thaddeus Herrick, <i>Judge Cuts Verdict Against Exxon in Alabama Case</i>, WALL ST. J., Mar. 30, 2004, at A6; Susan Warren, <i>Exxon Verdict Reflects Wider Anger: Judgment of \$11.9 Billion in Alabama Underscores Distrust of Companies</i>, WALL ST. J., Nov. 17, 2003, at A6.</p>	<p>Reversed. Rehearing led to \$11.8 billion punitive award, subsequently reduced to \$3.5 billion by judge; currently on appeal.</p>	<p>Supreme Court of Alabama reversed and remanded the case. Rehearing raised the punitive award. Judge reduced rehearing punitive award. Currently on appeal.</p>
61 Anderson v. General Motors Corp. (California)	<p><i>GM Agrees to Settlement, Stops Appeal of Billion-Dollar Judgment</i>, MEALEY'S PRODUCT LIABILITY &amp; RISK, Aug. 8, 2003, at 4.</p>	<p>Punitive reduced, defendant appealed, eventually settled for undisclosed amount.</p>	<p>Superior Court judge reduced the punitive damages award to \$1.09 billion, defendant abandoned appeal, settled for undisclosed amount.</p>

Case	Reference	Current Status	Comment
62 <i>In re</i> The Exxon Valdez (Alaska)	Thaddeus Herrick, <i>Judge Tells Exxon to Pay \$4.5 Billion</i> , WALL ST. J., Jan. 29, 2004, at B3; David Horrigan, <i>Oil Spill Washes Up On Trial Court Again</i> , NAT'L L.J., Sept. 8, 2003, at 14.	Reduced, remanded. Judge raised original reduction. Currently on appeal.	The 9th U.S. Circuit Court of Appeals reduced the punitive damages to \$4 billion. The Court ordered the U.S. district judge to revisit the punitive damages award in light of <i>State Farm v. Campbell</i> , on remand, district judge raised punitive to \$4.5 billion. Exxon is appealing.

Case	Reference	Current Status	Comment
63 Bullock v. Philip Morris Inc. (California)	Bullock v. Philip Morris Inc., 2002 WL 31833905, at *1, 3 (Cal. Sup. Ct., App. Div. Dec. 18, 2002); Benjamin Temchine, <i>California Jury Verdicts Soar in 2002</i> , RECORDER (S.F.), Jul. 7, 2003; Carolyn Whetzel, <i>Smoker Accepts Reduced Punitive Award in California Case</i> ; <i>Both Sides Plan to Appeal</i> , 31 BNA PROD. SAFETY & LIAB. REP. 21, 24 (2003).	Punitive damages reduced, case on appeal by both parties.	The judge reduced the punitive damages to \$28 million. California Superior Court, Appellate Division denied motion for new trial on punitive damages, conditioned on plaintiff's acceptance of \$28 million punitive damages. Plaintiff accepted, but has appealed. Defendant also appealed.
64 Engle v. R.J. Reynolds Tobacco Co. (Florida)	Liggett Group Inc. v. Engle, 853 So. 2d 434 (Fla. Ct. App. 2003).	Reversed	Reversed by the District Court of Appeals of Florida (3rd District).



Table 6: The Effect of Alternative Punitive Damages Ratio Limits

	Blockbuster Awards*	State Court Sample
Total awards	\$70.3 billion	\$246.0 million
Total cases	63	171
Ratio limit=9		
Awards amount	\$14.2 billion	\$104.6 million
Percentage of total awards	20	43
Percentage of total cases	43	96
Ratio limit=1		
Awards amount	\$6.6 billion	\$15.2 million
Percentage of total awards	9	6
Percentage of total cases	8	71

\*Note: This list of blockbuster awards excludes the class action case, *Engle v. R.J. Reynolds Tobacco Co.*

Figure 1: Flow Chart for Outcomes of Blockbuster Punitive Damages Awards

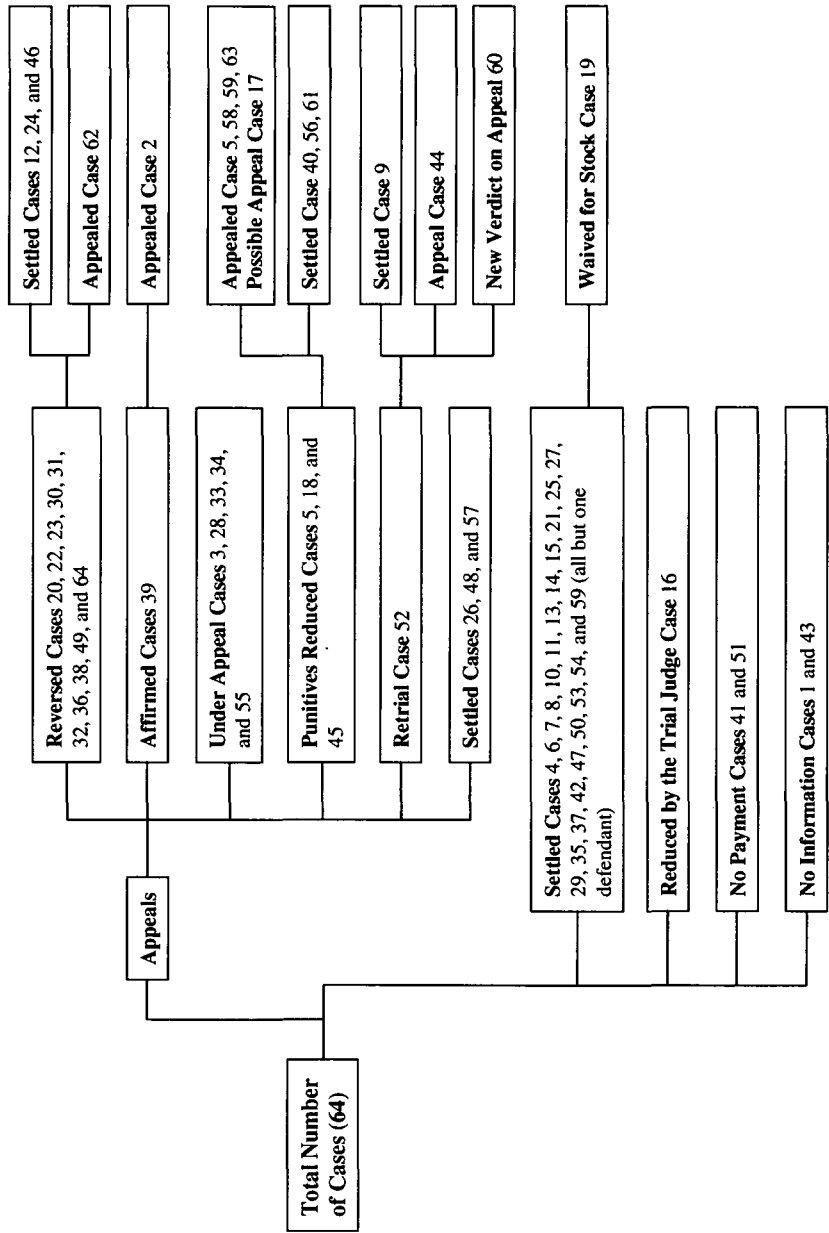


Figure 2: Shares of Blockbuster Cases and Punitive Damages Awards within the Punitive Damages/Compensatory Damages Ratio Limit

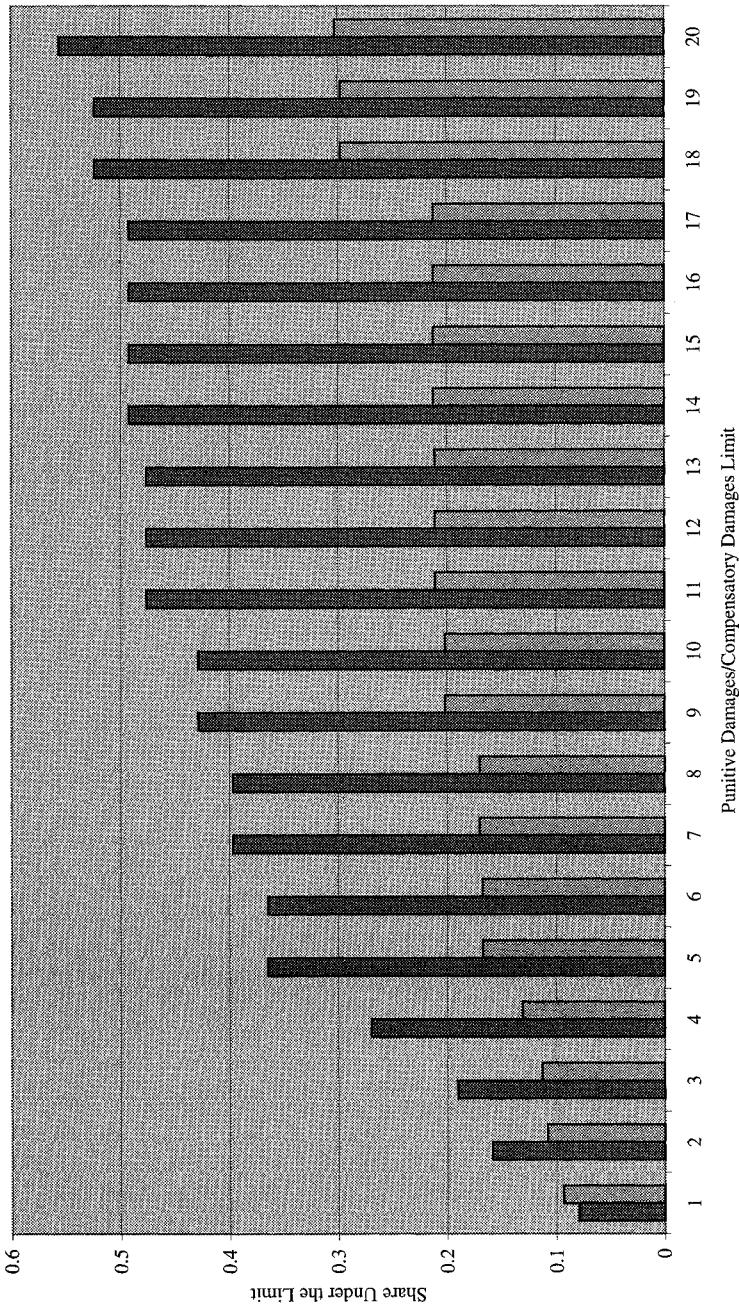


Figure 3: Shares of State Cases and Punitive Damage Awards within Punitive Damages/Compensatory Damages Ratio Limit

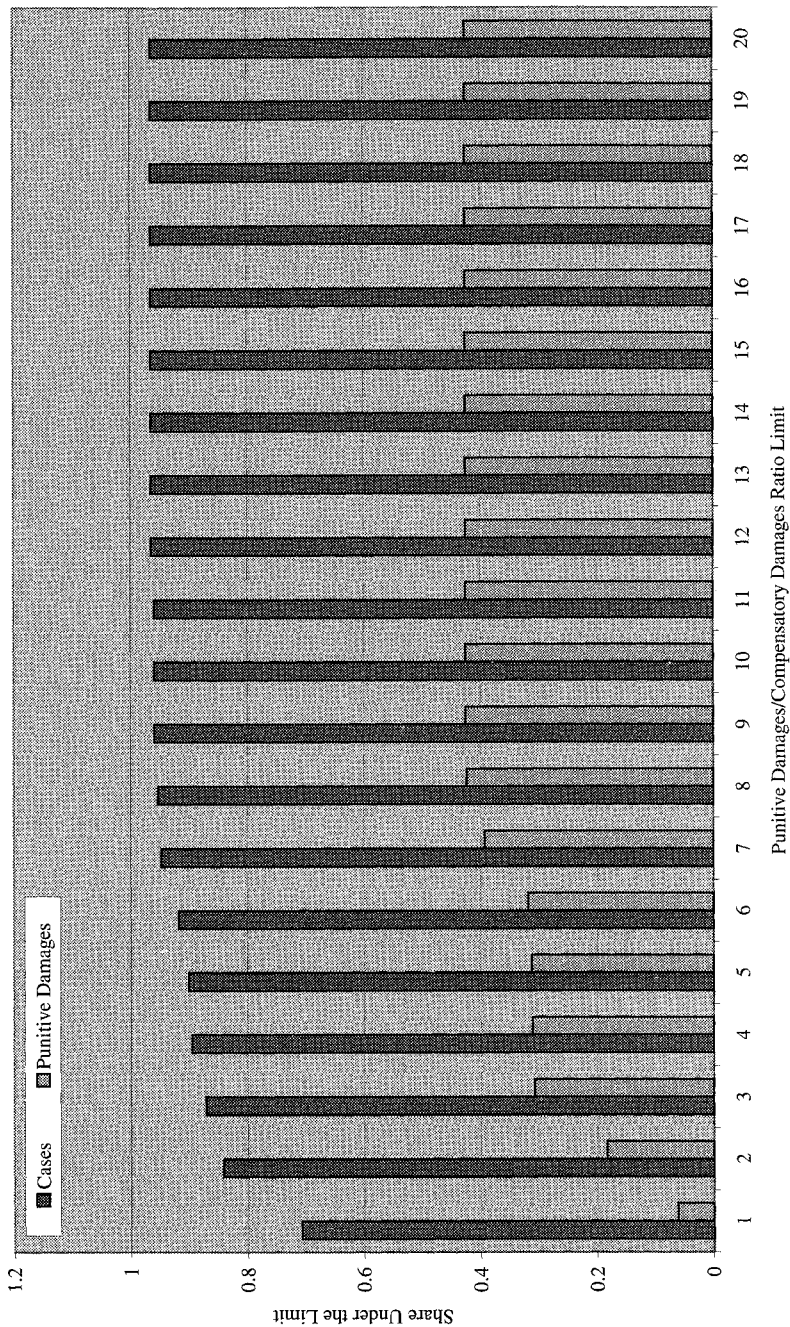


Figure 4: Share of Actual Blockbuster and State Courts Punitive Damages Awards Imposed under Different Ratio Limits

