

*STATE FARM AT THREE: LOWER COURTS'*  
APPLICATION OF THE RATIO GUIDEPOST

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INTRODUCTION

In 1993, Justice O'Connor observed that "time and again, this Court and its Members have expressed concern about punitive damages awards 'run wild,' inexplicable on any basis but caprice or passion."<sup>1</sup> Three years later, in *BMW of North America, Inc. v. Gore*,<sup>2</sup> the Court took a significant step toward reining in excessive punitive damages awards when it held that the Due Process Clause of the Fourteenth Amendment imposes substantive constitutional limits on the amount of punitive damages awarded. Most recently, in *State Farm Mutual Automobile Insurance Co. v. Campbell* ("*State Farm*"),<sup>3</sup> the Court continued its efforts to make punitive damages awards fairer and more manageable by setting forth more concrete guidance concerning the constitutionally permissible "ratio" between the amount of punitive damages and compensatory damages than it had in prior cases. Although the Court stopped short of setting forth a bright-line rule, the opinion strongly suggested that in most cases a single-digit ratio, typically 4:1, would reach the outer limits of due process, and that a 1:1 ratio might be the constitutional maximum in cases where compensatory damages are substantial.<sup>4</sup>

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1. *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 475 (1993) (O'Connor, J., dissenting) (quoting *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 9-12 (1991)) (Mayer, Brown, Rowe & Maw filed an amicus brief for the American Tort Reform Association et al. in support of TXO).

2. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (Mayer, Brown, Rowe & Maw represented BMW in this case).

3. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (Mayer, Brown, Rowe & Maw filed an amicus brief for the Chamber of Commerce of the United States in this case).

4. *Id.* at 425.

With the three-year anniversary of *State Farm* close at hand, we decided to examine whether the lower courts are heeding the Court's guidance. In this article, we analyze 199 post-*State Farm* decisions from the lower courts in which a party has challenged a verdict as constitutionally excessive.<sup>5</sup> We conclude that *State Farm* has significantly altered the landscape of punitive damages litigation in a wide range of cases. In particular, the Supreme Court's admonition that the ratio can exceed single digits in only limited circumstances has made an enormous difference. Before *State Farm*, many courts were willing to uphold punitive awards at high multiples of actual damages. Now, punishments of more than nine times the amount of compensatory damages are rarely countenanced. Indeed, most of the decisions upholding a double-digit ratio have involved small awards of economic damages or injuries that were difficult to detect or quantify – *State Farm*'s stated exceptions to the "single-digit" multiplier rule.<sup>6</sup> Moreover, when the amount of compensatory damages approaches or surpasses the six-figure range, many courts have adhered to the 4:1 benchmark that the Court has described as being "close to the line" of constitutionality.<sup>7</sup>

But the lower courts have been less consistent in implementing other aspects of *State Farm*'s guidance on ratio. More specifically, three troublesome trends persist. First, the lower courts have all but ignored *State Farm*'s recommendation that a reduction of punitive damages to a level at or near compensatory damages might be warranted when the compensatory award is objectively substantial (*e.g.*, above \$500,000), typically

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5. Our survey covers cases available on electronic databases through April 9, 2006. Cases in which the court cited *State Farm* to determine an appropriate punitive award in the first instance are excluded from the analysis, as are cases in which the court reduced a punitive award for reasons other than an application of the three guideposts set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), such as reductions under state law and challenges to arbitration awards. Included, however, are the decisions in *Osborn v. Leader Ins. Co.*, No. 03-17315, 2005 WL 954348 (9th Cir. Apr. 26, 2005); *Doe v. Wentzville R-IV Sch. Dist.*, Nos. 04-2753, 04-2757, 2005 WL 1353259 (8th Cir. June 7, 2005); and *Bogle v. Summit Inv. Co.*, 107 P.3d 520 (N.M. Ct. App. 2005), where the court never indicated the amount of compensatory damages awarded. Finally, we aggregated punitive damages awarded to multiple plaintiffs or assessed against multiple defendants.

6. *State Farm*, 538 U.S. at 425.

7. *Id.*

upholding ratios between 1:1 and 4:1 and occasionally even higher in such cases. Second, in an effort to comply with *State Farm*'s single-digit-ratio guideline without actually reducing the punitive award to a reasonable level, several lower courts have adopted dubious notions of "potential harm" that are inconsistent with the law or with *State Farm* itself. Finally, when the ratio under review has been between 4:1 and 9.9:1, a significant number of courts have rubber-stamped it as constitutionally permissible without carefully analyzing whether a further reduction might be warranted. This has led to the counterintuitive result that jury awards yielding ratios of 10:1 or more are routinely reduced to 4:1, but jury awards yielding ratios between 4:1 and 9.9:1 often withstand post-verdict review.

Part I of this article details the development of the "single-digit" multiplier rule and the Court's other statements regarding the ratio guidepost in *State Farm*. The remaining parts break down the cases by the amount of compensatory damages awarded (or potential harm involved) and analyze their consistency (or inconsistency) with *State Farm*. Part II evaluates cases where the compensatory award or potential harm was equal to \$25,000 or less. Part III looks at cases where the compensatory award or potential harm was between \$100,000 and \$499,999. Part IV analyzes cases where the compensatory award or potential harm was \$500,000 or greater.<sup>8</sup> Part V briefly concludes.

## I.

### THE DEVELOPMENT OF THE SINGLE-DIGIT-RATIO "RULE"

In *State Farm*, a jury had awarded a plaintiff \$145 million in punitive damages and \$2.6 million in compensatory damages (almost entirely for emotional distress) after an automobile accident occurred and State Farm failed to settle the underlying insurance claim within policy limits.<sup>9</sup> On post-trial motions, the trial court reduced the compensatory award to \$1 million and the punitive award to \$25 million.<sup>10</sup> The Utah Su-

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8. Though we also reviewed cases where the amount of compensatory damages or potential harm was between \$25,000 and \$99,999, we did not analyze this group of cases separately because we did not see any noticeable trends.

9. *State Farm*, 538 U.S. at 415.

10. *Id.*

preme Court, however, reinstated the \$145 million punitive award.<sup>11</sup>

The United States Supreme Court granted certiorari to address whether the amount of punitive damages exceeded constitutional limits. In its analysis, the Court provided greater substance to the structure of the three guideposts that it had established in *BMW of North America, Inc. v. Gore*.<sup>12</sup> (1) the degree of reprehensibility of the defendant's misconduct, (2) the ratio between the amount of punitive damages and the amount of actual or potential harm suffered by the plaintiff, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.<sup>13</sup>

At the outset of its ratio analysis, the Court acknowledged that it had been "reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award," and it "decline[d] again to impose a bright-line ratio which a punitive damages award cannot exceed."<sup>14</sup> But the Court went on to explain that "[o]ur jurisprudence and the principles it has now established demonstrate . . . that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."<sup>15</sup> The Court recounted prior decisions that indicated that a 4:1 ratio between punitive damages and compensatory damages "might be close to the line of constitutional impropriety" and that referenced the "long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish." It concluded that those decisions were "instructive" because, taken together, they demonstrated the "obvious" proposition that "[s]ingle-digit multipliers are more likely to comport with due process, while still achieving the State's goal of deterrence

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11. *Id.*

12. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996).

13. *State Farm*, 538 U.S. at 418.

14. *Id.* at 424-25.

15. *Id.* at 425.

and retribution, than awards with ratios in range of 500 to 1, or, in this case, of 145 to 1.”<sup>16</sup>

Consistent with its decision not to impose a bright-line rule, the Court went on to observe, citing *BMW*, that “ratios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages” or where “the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.”<sup>17</sup> Conversely, “[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limits of the due process guarantee.”<sup>18</sup> Applying these guidelines to the facts of the case before it, the Court observed that the \$1 million compensatory award for emotional distress sustained by the plaintiffs was “substantial” and constituted “complete compensation.”<sup>19</sup> The Court further noted that the award, while labeled “compensatory,” had a punitive component as well.<sup>20</sup> For these reasons, it concluded that, even though the defendant’s conduct was “reprehensible” and “merit[ed] no praise,”<sup>21</sup> “a punitive award at or near the amount of compensatory damages” – *i.e.*, a 1:1 ratio – was likely the constitutional maximum.<sup>22</sup>

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16. *Id.* (citing *BMW*, 517 U.S. at 581; *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 458 (1993); and *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23-24 (1991)).

17. *Id.* (citing *BMW*, 517 U.S. at 582 (internal quotation marks omitted)).

18. *Id.*

19. *Id.* at 426.

20. *Id.* at 429.

21. *Id.* at 419-20.

22. *Id.* at 429. As one commentator has theorized, the ratio guidepost has become more important since *State Farm* than it was after *BMW* because the *State Farm* Court put more weight on the concept of “non-arbitrariness” and less weight on the concept of “fair notice” than the *BMW* Court. Andrew C. Lund, *The Road From Nowhere? Punitive Damage Ratios After BMW v. Gore and State Farm Mutual Automobile Insurance Co. v. Campbell*, 20 *TOURO L. REV.* 943, 973-84 (2005).

II.  
APPLICATION OF *STATE FARM*'S RATIO ANALYSIS BY  
THE LOWER COURTS

The following patterns emerge from the 199 decisions we analyzed: In accordance with the Court's suggestion that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process,"<sup>23</sup> the lower courts generally presume that ratios exceeding single digits are unconstitutional. Indeed, such ratios tend to be upheld only when the compensatory award is \$12,000 or less, which is consistent with *State Farm*'s stated exceptions to its single-digit ratio guideline. As compensatory damages or actual and potential harm move beyond five figures, ratios in excess of single digits become highly suspect. Typically, such ratios will be sustained only upon a court's conclusion that (i) one of the stated exceptions has been satisfied, or (ii) the compensatory award understates the harm because the defendant was thwarted before it could succeed with its scheme to commit serious wrongdoing. Within the single-digit range, many courts recognize that a 4:1 ratio is the outer limit of constitutionality for conduct on a par with that at issue in *State Farm*, while others uphold larger single-digit ratios or reduce a double-digit ratio to single-digits, particularly where the defendant's conduct was highly reprehensible. Nevertheless, the lower courts rarely apply a limit of a 1:1 ratio even when the amount of compensatory damages is substantial and the misconduct is not especially reprehensible.

None of these patterns is uniform; there are always exceptions. Perhaps most troubling are the several lower court decisions in which a ratio in the high single digits or greater was upheld despite the existence of a substantial compensatory award.

A. *Compensatory Damages of \$25,000 or Less: Courts Frequently Uphold Ratios in Excess of Single Digits Pursuant to State Farm's Stated Exceptions*

Forty decisions have addressed a constitutional excessiveness challenge to punitive damages where the corresponding compensatory damages were less than \$25,000. In fifteen of

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23. *State Farm*, 538 U.S. at 410.

these forty cases, the lower court upheld a double-digit or greater ratio of punitive to compensatory damages.<sup>24</sup> Of the remaining twenty-five awards:

- two decisions reduced a high four-digit ratio to a lower four-digit ratio;
- four decisions reduced a three-digit ratio to a two-digit ratio;
- three decisions reduced a two-digit ratio to a lower two-digit ratio;
- three decisions upheld a ratio that was already in the single digits;
- one decision upheld a ratio reduced to single digits by the district court;
- six decisions involved double- or triple-digit ratios that were reduced to single-digit ratios pursuant to *State Farm*;
- two decisions determined that the ratio was so excessive that the punitive award had to be vacated; and
- four decisions determined that a double- or triple-digit ratio was unconstitutionally excessive but did not determine an appropriate remittitur (the courts either remanded the case back to the trial court or ordered further proceedings).<sup>25</sup>

Twenty-three of the twenty-four decisions sanctioning a double-digit or higher ratio (either by upholding the jury's award or by reducing the punitive award to a double-digit ratio) involved a compensatory award of \$12,000 or less, thus arguably triggering *State Farm's* express exceptions to its single-digit ratio guideline: (i) cases in which "a particularly egregious act has resulted in only a small amount of economic damages," and (ii) cases in which "the injury is hard to detect or the monetary value of non-economic harm might have been difficult to determine."<sup>26</sup>

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24. In one instance, the court of appeals upheld a 110:1 ratio after the trial court had trimmed it from 200:1. *See* *Lincoln v. Case*, 340 F.3d 283 (5th Cir. 2003).

25. *See infra* App. A.

26. The remaining case is *Krysa v. Payne*, 176 S.W.3d 150 (Mo. Ct. App. 2005), in which the plaintiff alleged that the defendant had sold him a defective truck. The court upheld the jury's \$500,000 punitive award, which was twenty-seven times the compensatory award of \$18,450. It reasoned that,

One notable example is the Seventh Circuit's opinion in *Mathias v. Accor Economy Lodging, Inc.*, authored by Judge Posner.<sup>27</sup> In *Mathias*, the plaintiffs sued for injuries sustained during their stay in a bedbug-infested hotel room. The court upheld a punitive award that was more than 37 times the \$10,000 compensatory award, asserting that the *State Farm* Court had "said merely that there is a presumption against an award that has a 145-to-1 ratio."<sup>28</sup> The court explained that in *State Farm*,

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while only economic harm was involved, the "potential harm" was much higher because the truck posed "a significant safety risk." *Id.* at 160-61; *cf.* *Craig v. Holsey*, 590 S.E.2d 742, 748 (Ga. Ct. App. 2003) (upholding a \$200,000 punitive award in drunk driving case where the compensatory award totaled \$8,801 because plaintiff "could have died as a result of [defendant's] driving under the influence[, and therefore] . . . the potential harm was much greater than the actual"); *Strenke v. Hogner*, 704 N.W.2d 309, 316 (Wis. Ct. App. 2005) (upholding punitive award of \$225,000 in drunk driving case where compensatory damages were only \$2,000 on the ground that it was only the plaintiff's "good luck" that prevented the ratio from "being in the 1:1 or 2:1 range"). *But see* *Texas Moto-Plex, Inc. v. Phelps*, No. 11-03-00336-CV, 2006 WL 246520 (Tex. App. Eastland Feb. 2, 2006) (refusing to uphold \$75,000 punitive damages award to injured motocross rider on the ground that he could have been injured more seriously (as happened to another rider)); *Craig*, 590 S.E.2d at 749 (Andrews, J., dissenting in part) (correctly noting that it is wrong to consider "potential harm" in these circumstances because any case in which a plaintiff sustained non-trivial physical injuries could be said to involve the potential harm of death).

The court devised a similarly creative way to avoid *State Farm*'s constraints in *Sheedy v. City of Philadelphia*, No. Civ.A.03-06394-JF, 2005 WL 375657 (E.D. Pa. Feb. 15, 2005). In that case, the jury had awarded \$500,000 in punitive damages and \$3,075 in compensatory damages for false imprisonment. With no apparent basis in the record, the court assumed that the compensatory award "included only the plaintiff's actual out-of-pocket expenses" and that the punitive award included payment for the "very substantial non-economic damages [the plaintiff] sustained." It surmised that only \$400,000 of the punitive award was "actually attributable to punitive damages," with the remaining \$100,000 as compensation for non-economic damages. *Id.* at \*5. The court then held that the portion of the award that it deemed "actually attributable to punitive damages" could not "reasonably exceed \$200,000" because of the defendant's limited financial resources and reduced the total punitive award to \$300,000. *Id.* It is hard to understand how this sort of analytical gerrymandering was either necessary or justified.

27. 347 F.3d 672 (7th Cir. 2003).

28. *Id.* at 676 (internal quotation marks omitted); *see also* *Jones v. Rent-A-Center, Inc.*, 281 F. Supp. 2d 1277, 1289-90 (D. Kan. 2003) (concluding that *State Farm* "offers no bright line standard by which to determine whether the ratio in this case, 29:1, is constitutional" in upholding punitive award against constitutional excessiveness challenge).

the substantial compensatory damages of \$1 million “greatly reduced the need for giving [the plaintiffs] a huge award of punitive damages (\$145 million) as well in order to provide an effective remedy.”<sup>29</sup> That circumstance presented a stark contrast to the case before it, in which a double-digit ratio was warranted because “[t]he defendant’s behavior was outrageous but the compensable harm done was slight [\$10,000] and at the same time difficult to quantify because a large element of it was emotional.”<sup>30</sup> As Judge Posner intimated in a subsequent decision,<sup>31</sup> *Mathias* thus exemplifies one of the exceptions expressly identified in *State Farm*.

Many of the decisions upholding a double-digit or higher ratio have expressly recognized the general applicability of *State Farm*’s suggested limit of a single-digit ratio and have invoked one of the Supreme Court’s stated exceptions. For example, in *Sherman v. Kasotakis*, a racial discrimination case, an

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29. *Mathias*, 347 F.3d at 677.

30. *Id.*

31. See *Lust v. Sealy, Inc.*, 383 F.3d 580, 591 (7th Cir. 2004) (Posner, J.) (“As we emphasized in *Mathias* . . . capping the ratio of compensatory and punitive damages makes sense only when the compensatory damages are large . . .”). Nevertheless, many lower courts have failed to heed this restriction on *Mathias*’s holding, relying on the Posner decision to justify double-digit ratios in cases where the compensatory damages were far larger. See, e.g., *Hollock v. Erie Ins. Exchange*, 842 A.2d 409 (Pa. Super. 2004), discussed *infra* notes 69-74 (relying on *Mathias* in upholding punitive award that was over ten times the \$278,825 compensatory award); *White v. Ford Motor Co.*, slip. op. no. CV-N-95-279-DWH (D. Nev. Mar. 15, 2005), discussed *infra* notes 126-30 (relying on *Mathias* to justify punitive award that was over 22 times the \$2.3 million compensatory award); *Planned Parenthood of the Columbia/Williamette, Inc. v. American Coal. of Life Activists*, 300 F. Supp. 2d 1055, 1063 (D. Or. 2004), *rev’d* 422 F.3d 949 (9th Cir. 2005), discussed *infra* notes 122-25 (relying on *Mathias* in upholding aggregate punitive award that was more than 108 times the \$526,336 in aggregate compensatory damages); cf. *Estate of Moreland v. Dieter*, 395 F.3d 747, 757 (7th Cir. 2005) (noting that the court in *Mathias* “upheld a punitive damages award of more than 37 times the size of the underlying compensatory damages” even though the compensatory award was \$29 million). But see *Turner v. Firststar Bank, N.A.*, No. 5-04-0548, 2006 WL 539448, at \*10 (Ill. App. Mar. 6, 2006) (refusing to rely on *Mathias* to justify \$500,000 punitive award where compensatory damages were \$25,000 and defendant was wealthy because *State Farm* indicated a single-digit ratio was appropriate and “we are mindful of the United States Supreme Court’s admonition, in *Campbell*, that ‘[t]he wealth of a defendant cannot justify an otherwise constitutional punitive damages award’”) (citation omitted).

Iowa district court observed that “[i]n spite of its reluctance to draw a line in the sand that punitive damages awards may not cross, the Court has stated that ‘in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.’”<sup>32</sup> The court concluded that “[t]his case epitomizes the Supreme Court’s rationale for refusing to erect a strict mathematical formula for the analysis of proportionality – to do so would leave unpunished the egregious conduct of defendants where the civil rights violation has resulted in injuries that are difficult to quantify.”<sup>33</sup>

But even when applying the stated exceptions, some courts still find ways to evade *State Farm*’s boundaries. A good example is the Eleventh Circuit’s decision in *Kemp v. AT&T*.<sup>34</sup> The jury awarded the plaintiff \$115.05 in compensatory damages and \$1 million in punitive damages for AT&T’s participation in an illegal gambling scheme that was “designed to exploit customers who were unsophisticated and economically vulnerable.”<sup>35</sup> The court held that \$250,000 was the constitutional maximum – despite its recognition that the resultant ratio significantly exceeded the “single digit multiplier” identified in *State Farm* – because it believed that a lesser award would not deter a company as wealthy as AT&T.<sup>36</sup> For support, the court pointed to a pre-*State Farm* case upholding a punitive award of \$4.35 million, which was “around 100 times

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32. *Sherman v. Kasotakis*, 314 F. Supp. 2d 843, 874 (N.D. Iowa 2004) (quoting *State Farm*, 538 U.S. at 425).

33. *Id.* at 875. Similarly, in *Schwigel v. Kohlmann*, 694 N.W.2d 467 (Wis. Ct. App. 2005), the Wisconsin Court of Appeals upheld a \$375,000 punitive award in a conversion case despite the fact that it was “just over thirty” times the \$120,000 compensatory award, noting that “[t]he United States Supreme Court has observed that larger punitive damages awards may be constitutional where ‘a particularly egregious act has resulted in only a small amount of economic damage.’” *Id.* at 474 (citation omitted); *see also* *Lincoln v. Case*, 340 F.3d 283, 293-94 (5th Cir. 2003) (upholding a ratio greater than single digits “given the ‘inherently low or hard-to-determine actual injuries’ in housing discrimination cases and the important goal of deterring future wrongdoing”).

34. *Kemp v. AT&T*, 393 F.3d 1354 (11th Cir. 2004).

35. *Id.* at 1363.

36. *Id.* at 1363-64.

the amount of actual damages awarded by the jury [\$47,000].”<sup>37</sup>

This reasoning rests on two errors. First, the panel improperly assumed that \$47,000 is small enough to fit *State Farm*’s exception for “small” compensatory awards, and that a ratio of around 100:1 would be permissible in that situation.<sup>38</sup> Second, it wrongly assumed that a four-digit ratio could be justified merely because the defendant is wealthy. To the contrary, *State Farm* clearly states that “[t]he wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.”<sup>39</sup> Given that the amount of compensatory damages awarded in *Kemp* was hardly nominal, it is difficult to understand how *State Farm* can be read to permit a four-digit ratio in that case.<sup>40</sup>

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37. *Id.* at 1364 (citing *Johansen v. Combustion Eng’g, Inc.*, 170 F.3d 1320, 1338-39 (11th Cir. 1999)).

38. *See infra* App. B (showing that only two courts have permitted a double-digit ratio when the compensatory award was between \$25,000 and \$100,000 since *State Farm* was decided).

39. *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 427 (2003); *see also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 585 (1996) (“The fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demand that the several States impose on the conduct of its business”); *Sand Hill Energy, Inc. v. Smith*, 142 S.W.3d 153, 167 (Ky. 2004) ([In *State Farm*,] “the United States Supreme Court frowned upon ‘the presentation of evidence of a defendant’s net worth[, because it] creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences’”).

The proper role of a corporation’s wealth in the punitive damages calculus is an important subject on which there is substantial lower court disagreement. *Compare, e.g., id.* at 167, *with, e.g., McCrink v. Peoples Benefit Life Ins. Co.*, No. Civ.A.2:04CV01068LDD, 2004 WL 2743420, at \*9 (E.D. Pa. Nov. 29, 2004). The subject, however, is beyond the scope of this article. We thus do not address it in full detail here. Rather, we comment only on those situations where the corporation’s wealth was used to justify a substantially higher ratio than would otherwise be constitutionally permissible under *State Farm*.

40. Similarly flawed is the Sixth Circuit’s decision in *Romanski v. Detroit Entertainment, LLC.*, 428 F.3d 629 (6th Cir. 2005). In that case, a patron sued the casino under 42 U.S.C. § 1983 for false arrest after an incident at a slot machine. The jury awarded \$279.50 in compensatory damages and \$875,000 in punitive damages. In its ratio analysis, the Sixth Circuit stated that because the compensatory award was so low, the “ratio” was essentially meaningless. *Id.* at 646. Rather, the court found “the best approach is to compare it to punitive awards examined by courts ‘in other civil rights cases to find

More difficult to evaluate is the California Supreme Court's decision in *Simon v. San Paolo U.S. Holding Co.*<sup>41</sup> Simon had signed a letter of intent to purchase property from San Paolo, which agreed not to negotiate with other prospective buyers while negotiating with Simon. San Paolo broke that agreement and entered into a deal with another buyer. Simon was awarded \$5,000 in compensatory damages for his out-of-pocket expenses and \$1.7 million in punitive damages. The jury rejected Simon's claim for breach of contract.<sup>42</sup> The appellate court affirmed the award and the California Supreme

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limits and proportions.'” *Id.* at 646 (quoting *Lee v. Edwards*, 101 F.3d 805, 811 (2d Cir. 1996)); *see also* *Fabri v. United Techs. Int'l*, 387 F. 3d 109, 126 (2d Cir. 2004) (suggesting that, when compensatory damages are small, a better guide to the maximum permissible punitive award is the award in comparable cases (quoting *Lee*, 101 F.3d at 811)). The court found one factually similar case in which the post-remittitur punitive award was \$600,000 (three times the compensatory award of \$200,000). *Romanski*, 428 F.3d at 648 (citing *Wal-Mart Stores, Inc. v. Goodman*, 789 So. 2d 166, 171 (Ala. 2000)). The Sixth Circuit accordingly reduced the punitive award to \$600,000, noting that this amount was only 60% of the casino's daily intake of nearly \$1,000,000 (an indicator of its “wealth”). *Id.* at 649.

By deeming comparable a decision involving a much greater compensatory award and by relying on the defendant's wealth to justify a higher punitive award, the panel made the same analytical errors as the court in *Kemp v. AT&T*, 393 F.3d 1354 (11th Cir. 2004); *see supra* notes 34-40. Interestingly, the *Romanski* panel recognized that, even apart from *State Farm's* admonition about the use of wealth evidence to justify a punitive damages award, “[c]ommon sense gives us an additional reason to view skeptically the generic proposition that a high punitive award is necessary because of the wealth of a defendant.” *Id.* at 647-48. The panel nevertheless reached a conclusion directly to the contrary, believing that it “must take into account the casino's wealth to ensure that the punitive damages award will further the interests it is designed to advance.” *Id.*; *cf.* *Lowe Excavating Co. v. Int'l Union of Operating Eng'rs Local No. 150*, 832 N.E.2d 495, 505-06 (Ill. App. 2005) (reducing punitive award of \$525,000 to \$325,000 where there was \$4,280 in compensatory damages because a ratio of 75:1 is “constitutionally acceptable” while a ratio of 115:1 is “exceedingly disproportionate”); *Wolf v. Wolf*, 690 N.W.2d 887, 895-96 (Iowa 2005) (upholding \$25,000 punitive award in custody dispute where plaintiff received nominal damages because his actual harm was “substantial” but he had “waived all amounts over one dollar”).

41. *Simon v. San Paolo U.S. Holding Co.*, 113 P.3d 63 (Cal. 2005) (Mayer, Brown, Rowe & Maw filed an amicus brief and presented oral argument for the Chamber of Commerce of the United States in support of San Paolo U.S. Holding Co).

42. *Id.* at 69.

Court denied review.<sup>43</sup> The U.S. Supreme Court then granted certiorari, vacated the Court of Appeal's decision, and remanded the case for further consideration in light of *State Farm*. But the California Court of Appeal *again* upheld the award, reasoning that the plaintiff's actual damages amounted to \$400,000 – the difference between the \$1.1 million that he had agreed to pay and the \$1.5 million that his expert testified the building was worth.<sup>44</sup> The court concluded that with \$400,000 as the denominator, the true ratio of punitive to compensatory damages was approximately 4 to 1.<sup>45</sup>

The California Supreme Court reversed, explaining that the plaintiff's \$400,000 in expected lost profits “cannot be considered potential harm from [the fraud] because, in the absence of any contractual obligation to sell [the plaintiff] the property, [the] tortious conduct could not have had the foreseeable effect of depriving [the plaintiff] an entitlement to purchase it.”<sup>46</sup> The Court also rejected the plaintiff's alternative argument that consideration of “potential harm” was appropriate because he could have been left with nowhere to go at the end of his lease:

The potential harm that is properly included in the due process analysis is “harm that is likely to occur from the defendant's conduct.” . . . A potential injury that was foreseeable from the defendant's conduct – whether because it constituted an unintended but reasonably likely risk or because it was a goal of the tortfeasor's conduct – is properly considered because

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43. *Id.*

44. *Id.*

45. *Id.* The California Court of Appeal was not the first court to use “potential harm” as a means of avoiding *State Farm's* ratio guidelines. At least two courts had previously done so in insurance bad-faith cases. See *Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co.*, No. CIV.A. 00-5481, 2003 WL 21321370, at \*3 (E.D. Pa. May 30, 2003), *aff'd on other grounds*, 399 F.3d 224 (3d Cir. 2005) (discussed *infra* notes 75-78); *Trinity Evangelical v. Tower Ins. Co.*, 661 N.W.2d 789, 803 (Wis. 2003). Both of these cases measured “potential harm” as the harm that could have resulted from the defendant's misconduct. As a dissenting judge in *Trinity Evangelical* pointed out, this comparison is “directly at odds with *Campbell*,” also a bad-faith case in which “the Supreme Court compared the punitive damages award to the actual compensatory damages in the bad faith action, not the damages in the underlying auto accident litigation.” *Id.* at 811 (Sykes, J., dissenting).

46. *Id.* at 74.

a tortfeasor had notice of the likelihood of such an injury.<sup>47</sup>

Because there was no evidence that the defendant “knew that [the plaintiff] was at risk of having no place to operate his business, much less intended him to suffer that consequence[,]” the plaintiff’s alternative theory of potential harm could not justify inflating the denominator for ratio analysis.<sup>48</sup>

Using Simon’s actual harm (\$5,000) as the denominator, the California Supreme Court decided that \$50,000 was the maximum amount of punitive damages consistent with due process.<sup>49</sup> The court explained its reasoning as follows:

This amount will “further [California’s] legitimate interests in punishing unlawful conduct and deterring its repetition” – interests limited here by the relatively light culpability of the conduct – without exceeding a level “both reasonable and proportionate to the amount of harm to the plaintiff.” A penalty of \$50,000, though just exceeding the largest single-digit ratio amount, is in absolute size not extraordinary for fraudulent conduct. But neither is it so minor, even accounting for [the defendant’s] wealth, that it can be completely ignored, especially when imposed for conduct that led to no profit for the company; even a prosperous company would ordinarily take reasonable measures to prevent the recurrence of a \$50,000 net loss.<sup>50</sup>

But perhaps even more significant than its holding is what *Simon* said about ratio analysis more generally:

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47. *Simon*, 113 P.3d at 73-74 (quoting *TXO Prod. Corp. v. Alliance Res. Corp.* 509 U.S. 443, 460 (1995)) (emphasis in original).

48. *Id.* at 75.

49. *Id.* at 81-82.

50. *Id.* (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003)) (citations omitted). The California Supreme Court had previously explained that it agreed with the Eleventh Circuit in *Kemp v. AT&T*, 393 F.3d 1354 (11th Cir. 2004), that “while wealth cannot substitute for the high court’s guideposts in limiting awards, and cannot alone justify a high award, the guideposts were not intended [to prevent juries and reviewing courts to give some consideration to the defendant’s financial condition when determining the amount needed to punish and deter].” *Simon*, 113 P.3d at 81-82.

We understand the court's statement in *State Farm* that "few awards" significantly exceeding a single-digit ratio will satisfy due process to establish a type of presumption: ratios between the punitive damages award and the plaintiff's actual or potential compensatory damages significantly greater than nine or 10 to one are suspect and, absent special justification (by, for example, extreme reprehensibility or unusually small, hard-to-detect or hard-to-measure compensatory damages), cannot survive appellate scrutiny under the due process clause . . . Multipliers *less* than nine or 10 are not, however, presumptively *valid* under *State Farm*. Especially when the compensatory damages are substantial or already contain a punitive element, lesser ratios "can reach the outermost limit of the due process guarantee."<sup>51</sup>

The court hastened to add that it did not agree "that 'in the usual case' the high court's decisions establish an 'outer constitutional limit' of approximately *four* times the compensatory damages," because "the judicial function is to police a range, not a point" and the Supreme Court's guidance concerning the history of double, triple and quadruple damages was only meant to be "instructive" and "*not binding*."<sup>52</sup> This conclusion is peculiar, because it is in the "usual" case that "instruction" is most apt.<sup>53</sup>

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51. *Id.* at 77.

52. *Id.*

53. On the day that the California Supreme Court decided *Simon*, it reversed the decision of the Court of Appeal in *Johnson v. Ford Motor Co.*, 224 P.3d 82 (Cal. 2005) and remanded the case for reconsideration of the proper amount of punitive damages. (Mayer, Brown, Rowe & Maw filed an amicus brief for the Chamber of Commerce in support of Ford in this case). In *Johnson*, the jury had awarded \$17,811.60 in compensatory damages and \$10 million in punitive damages after an automaker concealed the automobile's history of transmission repairs and replacements when reselling the car. The Court of Appeal reduced the punitive award to \$53,435, approximately three times the compensatory award. *Johnson*, 224 P.3d at 88. The California Supreme Court held that while the \$10 million punitive award could not be justified as a form of disgorgement of profits from plaintiff and others similarly situated (because that would pose the risk of multiple recovery), the automaker's conduct was "more reprehensible" because it was a repeat offender. *Id.* at 90, 94-96. Because the Court of Appeal did not consider this latter factor, the California Supreme Court remanded "for a new determination of the maximum constitutional award." *Id.* at 97. Three Jus-

In sum, when the amount of compensatory damages is small, lower courts generally will acknowledge that ratios normally should not exceed single-digits under *State Farm* but nevertheless may permit a higher ratio pursuant to one of *State Farm*'s enumerated exceptions. Almost all of the cases permitting a double-digit ratio or higher have involved compensatory damages of less than \$12,000.

B. *Compensatory Damages or Potential Harm of \$100,000 to \$499,999: Courts Generally Insist on a Single-Digit Ratio, Often Limiting the Ratio to 4:1, Unless the Ratio Produced by the Jury's Decision Was Between 4:1 and 9.9:1*

As compensatory awards or actual and potential harm reach beyond five figures, double-digit ratios become highly suspect. Of the sixty-seven decisions involving compensatory damages or potential harm between \$100,000 and \$499,999, only four have upheld a double- or triple-digit ratio.<sup>54</sup> The results in the remaining sixty-three cases were as follows:

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tices wrote separately to specify that the court of appeal was free to apply a 3:1 ratio on remand. *See id.* at 97-98 (Chin, J., concurring); *id.* at 98-100 (Baxter, J., concurring in part, dissenting in part, joined by J. Brown).

On remand in *Johnson*, the Court of Appeal held that "punitive damages of \$175,000, or just less than 10 times the compensatory award [9.8:1]" were appropriate because the reprehensibility of the misconduct was "high" but not "extraordinary" and the compensatory award did not contain a punitive element. *Johnson v. Ford Motor Co.*, 37 Cal. Rptr. 3d. 283, 290-91 (Cal. App. 2005).

54. In *Phelps v. Louisville Water Co.*, 103 S.W.3d 46 (Ky. 2003), the Kentucky Supreme Court concluded that the egregiousness of the defendant's actions, which had resulted in two deaths, and the "minimal amount awarded to compensate the victims' families" supported a \$2 million punitive damages award that was 11.3 times the \$176,361.64 compensatory award. *Id.* at 55. The majority opinion nowhere cited *State Farm*, which had been decided less than three weeks earlier. This glaring omission did not go unnoticed by the dissent, which cited *State Farm*'s endorsement of a 1:1 ratio between punitive and compensatory damages where the latter are substantial, and concluded that the evidence warranted a punitive award of at most \$500,000, resulting in a ratio of 2.8 to 1. *Id.* at 60 (Cooper, J., dissenting).

The other three cases upholding a double- or triple-digit ratio when the amount of compensatory damages or potential harm was between \$100,000 and \$499,999 are *Hollock v. Erie Insurance Exchange*, 842 A.2d 409 (Pa. Super. 2004), *CGB Occupational Therapy, Inc. v. RHA Pennsylvania Nursing Homes*, No. Civ.A.00-4918 (E.D. Pa. July 5, 2005), and *Superior Federal Bank v. Jones &*

- 44 decisions involved (and upheld or further reduced) ratios that were already in the single digits;
- one decision upheld a single-digit ratio that was reduced from double-digits by the trial court;
- three decisions increased the single-digit ratio from what the jury had awarded by upholding the jury's punitive award even though the compensatory award had been reduced;
- three decisions increased the single-digit ratio by reducing both the punitive and compensatory award;
- one decision reversed the trial court's reduction of a single-digit ratio to a lower ratio in the single-digit range;
- eight decisions reduced double- or triple-digit ratios to single digits;
- one decision determined that a triple-digit ratio was unconstitutionally excessive and remanded back to the trial court to order a remittitur or a new trial;
- one decision determined that a double-digit ratio was unconstitutionally excessive and remanded back to the trial court for determination of an appropriate ratio; and
- one decision determined that a single-digit ratio was unconstitutionally excessive and remanded to the district court to determine a proper ratio.<sup>55</sup>

Two significant trends emerge from the cases involving compensatory damages in this range: (i) a dearth of double-digit ratios that survive a constitutional excessiveness review, and (ii) the frequent application of *State Farm's* observation that a 4:1 ratio "might be close to the line of constitutional impropriety" to limit punitive awards to that multiplier for conduct that is not particularly egregious.<sup>56</sup> Applying this principle in *Diamond Woodworks, Inc. v. Argonaut Insurance Co.*, an insurance bad-faith case, the California Court of Appeal re-

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*Mackey Construction Co., LLC*, No. CA 04-1389, 2005 WL 3307074 (Ark. Ct. App. Dec. 7, 2005). They are discussed *infra* notes 69-70, 80, 84.

55. See App. C. *Collins Entm't Corp. v. Coats & Coats Rental Amusement Co.*, 584 S.E.2d 120 (S.C. App. 2003), upheld a ratio of slightly less than 10:1 (9.96:1). Its ratio is therefore represented in the chart as 9.9 rather than 10.0. In a few instances, the reduction was on non-constitutional grounds.

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

duced the \$5.5 million punitive damages award to \$1 million, approximately 3.9 times the \$258,570 compensatory damages award.<sup>57</sup> Likewise, in *Waddill v. Anchor Hocking, Inc.*,<sup>58</sup> and *Cass v. Stephens*<sup>59</sup> – two cases that had been remanded by the Supreme Court for further consideration in light of *State Farm* – the lower courts applied 4:1 and 3:1 ratios, respectively.<sup>60</sup>

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57. *Diamond Woodworks, Inc. v. Argonaut Ins. Co.*, 135 Cal. Rptr. 2d 736, 762 (Cal. App. 2003); cf. *Taylor Woodrow Homes, Inc. v. Acceptance Ins. Cos.*, No. G0295532, 2003 WL 21224088, at \*4 (Cal. App. May 28, 2003) (observing that “the *State Farm* court said that a punitive damage [award] of four times the compensatory damages ‘might be close to the line of constitutional impropriety,’” and reducing punitive award from \$5 million to \$1 million, or slightly less than four times compensatory damages).

58. *Waddill v. Anchor Hocking, Inc.*, 78 P.3d 570 (Or. App. 2003) (Mayer, Brown, Rowe & Maw filed an amicus brief for the Chamber of Commerce of the United States in support of Anchor Hocking).

59. *Cass v. Stephens*, 156 S.W.3d 38 (Tex. App. El Paso 2004).

60. See *Waddill*, 78 P.3d at 576 (reducing punitive award in products liability case from \$1 million to \$403,416, four times the compensatory award, because “there is no evidence that [the defendant] acted with intentional malice or engage[d] in trickery or deceit”); *Cass*, 156 S.W.3d at 76-77 (reducing punitive award in action for fraud and conversion from \$5 million (already reduced from \$25 million by the trial court) to \$600,000 where the compensatory award was \$200,082, because “the harm suffered by the plaintiffs was economic” and “there [already] were sizable economic damages and [\$978,492 in discovery sanctions]” against the defendant); see also *Fresh v. Ent’mt U.S.A. of Tenn., Inc.*, 340 F. Supp. 2d 851, 860 (W. D. Tenn. 2003) (reducing a punitive award of more than \$2 million to \$717,610 where the plaintiff received \$179,402 in compensatory damages and medical expenses for injuries suffered as a result of being kicked out of a strip club; given “the substantial amount of compensatory damages and medical expenses awarded in this case, a single-digit multiplier of four (4) appropriately complies with the constitutional limitations most recently set forth in *Campbell*”); *Textron Fin. Corp. v. Nat’l Union Fire Ins. Co. of Pitt.*, 13 Cal. Rptr. 3d 586, 604-05 (Cal. App. 2004) (reducing punitive award from \$1.7 million to \$360,000 where \$89,744 in compensatory damages was awarded for actual harm, and specifically rejecting the argument that a punitive award smaller than ten times compensatory would “render the award laughable” in light of defendant’s purported wealth); *Young v. DaimlerChrysler Corp.*, No. IP 01-0299-C-M/S, 2004 WL 2538639, at \*4 (S.D. Ind. Oct. 19, 2004) (reducing a punitive award of \$4.5 million in discrimination case to \$300,000, even though the conduct was of “relatively high reprehensibility,” because the compensatory award was \$100,000 and 3:1 was the maximum ratio under *State Farm* in this circumstance; the punitive award was further reduced because of the Title VII statutory cap).

One Title VII decision reducing the ratio to less than 3:1 is *Hines v. Grand Casino of La.*, 358 F. Supp. 2d 533 (W.D. La. 2005). In *Hines*, the jury awarded \$200,000 in punitive damages and \$150,000 in compensatory dam-

The Sixth Circuit recently reduced a punitive award to an even lower ratio in *Clark v. Chrysler Corp.*<sup>61</sup> The driver of a pick-up truck was killed after an accident in part because he was not wearing his seat belt and in part because of a defect in the design of the truck door. After his widow sued the truck manufacturer, the jury found that the decedent and the company had each been 50% at fault and awarded \$3 million in punitive damages and \$471,258.26 in compensatory damages (of which the manufacturer had to pay only 50% because of the driver's comparative fault). Both the district court and Sixth Circuit affirmed, but the Supreme Court granted review, vacated the judgment, and remanded the case for further consideration in light of *State Farm*.<sup>62</sup> The district court affirmed again. The Sixth Circuit reversed in a 2-1 decision, reducing the punitive award to \$471,258, though without a single rationale commanding a majority of the panel. Chief Judge Restani of the United States Court of International Trade, sitting by designation, held \$471,258 to be the constitutional maximum because the misconduct was only "moderate[ly] reprehensible" and the truck manufacturer's share of the compensatory award (\$235,629.13) "[was] not very substantial," and therefore only "a ratio of approximately 2:1 [to that 50% share] would comport with the requirements of due process."<sup>63</sup> Judge Kennedy, concurring in the judgment, believed the appropriate denominator to be the full compensatory award, but found a 1:1 ratio to be the constitutional maxi-

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ages, which the district court reduced, respectively, to \$170,000 and \$130,000 because of the Title VII statutory cap. The district court then remitted the compensatory award to \$20,000 and held that even \$170,000 was unconstitutionally excessive despite the fact that the company's conduct "certainly should not be held up as a model for other employers." *Id.* at 552-53. Observing that the wrongful conduct was only reckless and "did not show [the company] harbored some type of evil motive," the court held that a "multiplier of 150% is not unreasonable under the facts of this case." *Id.* It therefore reduced the punitive award to \$30,000. *Id.*

61. *Clark v. Chrysler Corp.*, 436 F.3d 594 (6th Cir. 2006).

62. *Chrysler Corp. v. Clark*, 540 U.S. 801 (2003).

63. *Clark*, 436 F.3d at 607. Chief Judge Restani believed that it was appropriate to use only the manufacturer's share of the compensatory award "to determine the appropriate ratio because a ratio based on the full compensatory award would improperly punish [the defendant] for conduct that the jury determined to be the fault of the plaintiff." *Id.* at 607 n.16.

mum; her analysis thus yielded the same \$471,258 award.<sup>64</sup> Judge Moore dissented in part because she believed that the award was constitutionally permissible regardless of whether the denominator comprised the full compensatory award or only the manufacturer's share.<sup>65</sup> Decisions like *Clark* should support defense counsel's efforts to reduce punitive awards to ratios in the lower single digits in cases where the compensatory award is between \$100,000 and \$499,999.

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64. *Id.* at 614 (Kennedy, J., concurring in the judgment). Judge Kennedy explained that "[i]n evaluating whether a damage award is substantial under a comparative fault regime, I believe that we should use the total compensatory award in evaluating whether the award is substantial. Using an award apportioned by the fault of the parties could have the effect of finding an award that is substantial as a whole, insubstantial when it is apportioned." *Id.* at 613 (stating that "\$235,629.13 is also a substantial compensatory award").

65. *Id.* at 619-24 (Moore, J., concurring in part and dissenting in part). She explained: "[T]he Court has never explicitly said that a 4:1 ratio actually is close to the constitutional line, just that it might be . . . When one considers that the Court in *TXO* upheld a punitive award that, even when charitably interpreted, featured a 10:1 ratio, one cannot seriously conclude that the Court really has designated the 4:1 ratio as close to the constitutional line or as a presumptive ceiling." *Id.* at 620-21. Moreover, she believed a 1:1 ratio to be appropriate because the compensatory award was not "based on a component which was duplicated in the punitive award." *Id.* at 622. She further considered it to inappropriate for courts "to set floors or ceilings in the case before it by borrowing ratios from other cases," because to do so ignores the Supreme Court's refusal to establish a specific mathematical formula to guide the maximum constitutionally permissible punitive damages award in different circumstances. *Id.* at 623. "Having rejected the presumptive ceiling and floor as flawed both in approach and in the specific ratios chosen," Judge Moore saw "no independent justification for reducing the ratio from 13:1." *Id.* at 624.

Another recent decision in this category where the court reduced the ratio to less than 4:1 is *Casumpang v. International Longshore & Warehouse Union, Local 142*, 411 F. Supp. 2d 1201 (D. Hawaii 2005), a retaliatory discharge case. The jury awarded \$1 million in punitive damages and \$240,000 in compensatory damages (\$90,000 for injury to reputation and \$150,000 for emotional distress). The court reduced the punitive award to \$240,000, explaining that, although the ratio of punitive to compensatory damages was "approximately 4:1," the amount of punitive damages was nevertheless too high: "Where a compensatory damages award is based on emotional distress damages caused by humiliation and outrage, it likely contains a punitive element of punishment in addition to an element of compensation . . . In light of the substantial compensatory damages awarded and the duplicative considerations in the compensatory and punitive awards, the Court finds that the punitive damages award of one million dollars is excessive." *Id.* at 1220 (citing *State Farm*, 538 U.S. at 426).

Other courts addressing awards in this compensatory-damages range, however, have been far less nuanced in their application of the ratio guidepost. A prime example is the Ninth Circuit's decision in *Zhang v. American Gem Seafoods, Inc.*,<sup>66</sup> an employment discrimination case. In upholding a \$2.6 million punitive award that was more than seven times the \$360,000 compensatory award, the *Zhang* panel stated: "[W]e are aware of no Supreme Court or Ninth Circuit case disapproving of a single-digit ratio between punitive and compensatory damages, and we decline to extend the law in this case."<sup>67</sup> Cases like *Zhang* are part of a counterintuitive trend: If the jury's original award yields a ratio in the double digits, it may well be reduced to an amount that yields a ratio of 4:1 or 5:1, whereas if the original award yields a ratio of 7:1 or 8:1, it may be upheld with relatively little analysis.<sup>68</sup>

66. *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003).

67. *Id.* at 1044; *see also* *Brent v. Redfearn*, No. 4:04CV266-CDP, 2006 U.S. Dist. LEXIS 11697, at \*12 (E.D. Mo. Mar. 21, 2006) (upholding ratio of 5:1 where compensatory damages were \$100,000); *Jones v. Delaware Cmty. for Individual Dignity*, No. Civ.A. 00C-06-075CLS, 2004 WL 2827924 (Del. Super. Apr. 29, 2004) (upholding 9.6:1 ratio where compensatory damages were \$150,000); *Collins Entm't Corp. v. Coats & Coats Co.*, 584 S.E.2d 120 (S.C. App. 2003) (upholding 9.9:1 ratio where compensatory damages were \$157,450); *Haggar Clothing Co. v. Hernandez*, 164 S.W. 3d 407, 419 (Tex. App. Corpus Christi 2003) (focusing exclusively on Court's reference to single-digit ratios in upholding 6.7:1 ratio where compensatory damages were \$210,000), *vacated on other grounds by* 164 S.W.3d 386 (Tex. 2005); *Chu v. Hong*, 185 S.W.3d 507 (Tex. App. Fort Worth 2005) (upholding punitive award 4.5 times compensatory award of \$330,000); *Trinity Evangelical Lutheran Church & Sch. – Friestadt v. Tower Ins. Co.*, 661 N.W.2d 789, 803 (Wis. 2003) (implicitly concluding that 7:1 ratio of punitive damages to \$490,000 in potential harm was not suggestive of an excessive punishment), *cert. denied*, 124 S. Ct. 925 (2003).

The Ninth Circuit recently cited *Zhang* for the proposition that "[t]he redress of racial, religious or gender discrimination has been treated as a special area of public concern where affront to human rights may require high punitives." *S. Union Co. v. S.W. Gas Corp.*, 415 F.3d 1001, 1011 (9th Cir. 2005), *as amended by* 423 F.3d 1117 (9th Cir. 2005).

68. There have been only two decisions in this range in which high single-digit ratios were reduced to 4:1. *See* *Harris v. Archer*, 134 S.W.3d 411 (Tex. App. Amarillo 2004) (reducing ratio of 7.4:1 to 4:1); *Waddill v. Anchor Hocking, Inc.*, 78 P.3d 570 (Or. App. 2003) (reducing ratio of 9.9:1 to 4:1). In one case, the Montana Supreme Court even reinstated a ratio above 4:1 after the trial court had reduced the punitive award to 2.5:1. *Marie Deonier & Assocs. v. Paul Revere Life Ins. Co.*, 101 P.3d 742 (2004) (restoring jury's original award, which yielded ratio of 6.7:1).

Most unfaithful to *State Farm* are the decisions upholding double-digit ratios despite the existence of a six-figure compensatory award. One such case – the Pennsylvania Superior Court’s decision in *Hollock v. Erie Insurance Exchange*<sup>69</sup> – arguably rests on an idiosyncrasy of Pennsylvania insurance coverage law. The other outliers are less easily explained.

In *Hollock*, the judge (in a bench trial) awarded \$278,825 in compensatory damages and \$2.8 million in punitive damages, for a ratio of approximately 10:1, to an insured who alleged that the defendant insurer had acted in bad faith by failing to investigate, process, and satisfy her claim within a reasonable time.<sup>70</sup> In upholding the award on appeal, the Pennsylvania Superior Court reasoned that a double-digit ratio was warranted in light of the defendant’s reprehensible conduct, its significant wealth, and the limited compensatory award.<sup>71</sup> Notably, in reaching this conclusion, the court relied on Judge Posner’s opinion in *Mathias* despite the considerable difference in the magnitude of the compensatory awards in the two cases.<sup>72</sup> Moreover, the insurer’s conduct does not appear to have been any more reprehensible than the conduct in a run-of-the-mill insurance bad-faith case,<sup>73</sup> and the majority did not even attempt to fit the case into a *State Farm* exception. Accordingly, the outcome in *Hollock* is hard to reconcile with *State Farm*.<sup>74</sup>

The ramifications of the *Hollock* court’s creative machinations became apparent in the Third Circuit’s subsequent decision in *Willow Inn, Inc. v. Public Service Mutual Insurance Co.*<sup>75</sup> In *Willow Inn*, the jury awarded \$150,000 in punitive damages and \$2,000 in compensatory damages for insurance bad faith. The district court upheld the punitive award despite the 75:1 ratio on the ground that the “potential harm” was around

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69. *Hollock v. Erie Ins. Exch.*, 842 A.2d 409 (Pa. Super. 2004).

70. *Id.* at 412-13.

71. *See id.* at 421-22.

72. *Id.*

73. *See id.* at 423-24 (Klein, J., dissenting).

74. The Pennsylvania Supreme Court granted review in *Hollock*. *Hollock v. Erie Ins. Exch.*, 878 A.2d 864 (Pa. 2005). The case was argued in December 2005. (Mayer, Brown, Rowe & Maw filed an amicus brief for the Chamber of Commerce of the United States in support of Erie).

75. *Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co.*, 399 F.3d 224 (3d Cir. 2005).

\$125,000 because that was the amount of “Willow Inn’s claim under the policy and the payment that it belatedly received.”<sup>76</sup> The Third Circuit rejected this reasoning because it did “not agree that this is a ‘potential harm’ case” under *TXO*. “[P]otential harm analysis is inapposite,” the panel held, where there is not a thwarted scheme.<sup>77</sup>

The Third Circuit nevertheless upheld the \$150,000 punitive award because it thought that the amount of attorneys’ fees and costs should be included in the denominator for ratio purposes in insurance bad faith cases under *Hollock*.<sup>78</sup> “These awards totaled \$135,000, resulting in approximately a 1:1 ratio,” the Third Circuit explained, which “approache[d] the constitutional limit given the reprehensibility of [the insurer’s] conduct.”<sup>79</sup> Although *Willow Inn* appropriately clarifies the limited scope of the “potential harm” exception for ratio analysis and recognizes that 1:1 may be the appropriate limit in certain circumstances, it poses substantial danger of being taken out of context by a court looking to evade *State Farm*’s constraints.

One clear-cut example of such a case is *CGB Occupational Therapy, Inc. v. RHA Pennsylvania Nursing Homes*, in which the district court seized on some of the analysis in *Willow Inn* as a basis for simply ignoring the amount of compensatory damages.<sup>80</sup> In *CGB*, the defendants were held liable for tortiously interfering with the plaintiff’s relationship with several con-

76. *Id.* at 234.

77. *Id.*; see also *Bains LLC v. ARCO Prods. Co.*, 405 F.3d 764, 776 (9th Cir. 2005) (explaining that the district court erred in considering “potential harm” in case involving racial discrimination because “potential harm” is relevant only when considering a wrongful plan that did not succeed, or cause harm to others “when victims are not in a position to vindicate the wrongs against themselves”). In *Bains*, the court deemed a \$5,000,000 punitive award unconstitutionally excessive when the compensatory award was only \$50,000, stating that the constitutional maximum was between \$300,000 and \$450,000. *Id.* at 777. But see *United States v. Veal*, 365 F. Supp. 2d 1034, 1040 (W.D. Mo. 2004) (upholding a punitive award of \$1,055,000 where \$47,804 in compensatory damages were awarded for discriminatory housing practices, noting that a “22 to 1” ratio of punitive to compensatory damages was constitutionally permissible “given the relatively low compensatory award”).

78. *Willow Inn*, 399 F.3d at 236 (citing *Hollock*, 842 A.2d at 421).

79. *Id.* at 235.

80. *CGB Occupational Therapy, Inc. v. RHA Penn. Nursing Homes*, No. Civ.A.00-4918, 2005 WL 1595428 (E.D. Pa. July 5, 2005). (Mayer, Brown,

tractors that it employed on an at-will basis, conduct that gave rise to \$109,000 in compensatory damages. The jury awarded \$30 million in punitive damages, which the district court reduced to \$2 million on state-law grounds. The court then held this reduced amount of punitive damages was constitutionally permissible. It explained that, although the ratio of the reduced punitive award to compensatory damages appeared to be “roughly 19:1,” “*Willow Inn* . . . grant[s] the district courts substantial freedom in determining the harm term in the *State Farm* ratio analysis,” though the court’s “latitude is somewhat more limited than was the case with the bad faith statutes in *Willow Inn*.”<sup>81</sup> The court then speculated – without citing to the record – that “the true ratio, could the harm caused by Defendant be expressed as a simple dollar value, would be closer to three to one” “given the hardships Defendant imposed on Plaintiff in its treatment of Plaintiff after the interference took place, and given Defendant’s antics leading up to the first trial . . . .”<sup>82</sup>

Given the Third Circuit’s express focus upon the unique status of insurance bad faith cases under Pennsylvania law,<sup>83</sup> the result in *CGB* is tenuous. Nothing in *Willow Inn* indicates that the court can devise its own denominator for ratio analysis out of mere suspicion that certain harm was un- or under-compensated by the compensatory damages award. Indeed, such a practice would drain the ratio guidepost of all utility, because any amount of punitive damages could be justified indirectly by the mere assertion that the “true ratio” was lower.<sup>84</sup>

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Rowe & Maw represents the defendants in this action, which is currently on appeal to the Third Circuit).

81. *Id.* at \*4. In reaching this conclusion, the court also relied on *Sheedy v. City of Philadelphia*, No. 03-06394-JF, 2005 WL 375657 (E.D. Pa. Feb. 15, 2005) (discussed *supra* note 26).

82. *CGB*, 2005 WL 1595428, at \*4.

83. See *Willow Inn*, 399 F.3d at 235-36. The court even noted that its “conclusion is not without conceptual difficulty” and is potentially in tension with *BMW* and *State Farm*. *Id.* at 235.

84. Even more problematic is *Superior Federal Bank v. Jones & Mackey Construction Co., LLC*, No. CV2000-3975, 2005 WL 3307074 (Ark. App. Dec. 7, 2005). The plaintiff sued the defendant for breach of contract, promissory estoppel and defamation after a business venture that failed due to a false allegation of check-kiting. The plaintiff prevailed at trial, and the jury awarded \$411,000 for the breach of contract, \$210,000 for promissory estoppel, \$175,000 for defamation, and \$5 million in punitive damages. The trial

In sum, when compensatory damages (or potential harm) reach six figures but are less than \$500,000, lower courts have consistently applied *State Farm's* single-digit-ratio presumption to reduce double-digit ratios to single digits and typically have deviated from that guideline only upon concluding that the case involves at least one of *State Farm's* exceptions.<sup>85</sup> The data also indicate that in most cases where a court finds a double-digit ratio to be excessive, it reduces the amount of punitive damages to four times the amount of compensatory damages or less. Interestingly, however, awards that yield ratios between 4:1 and 9.9:1 still tend to be upheld. That trend indicates that while courts presented with punitive awards in this range will try to ensure that the awards comply with *State Farm's* single-digit-ratio suggestion, they will be less concerned with whether the award comports with the Court's other guidance.

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judge set aside the \$210,000 compensatory award for promissory estoppel but left the rest of the judgment intact. After the Arkansas Court of Appeals remanded the punitive award for reconsideration in light of *State Farm*, the trial judge reduced the punitive award to \$3.08 million. On review, the Arkansas Court of Appeals upheld this award in its entirety. *Id.* It noted that “[o]ur research indicates that [the ratio] factor seems to engender great confusion and controversy in comparison with the other factors . . . due in no small part to the U.S. Supreme Court’s rather conflicting statements on the matter” in *Haslip*, *TXO*, *Gore*, and *State Farm*. *Id.* In so concluding, the panel ignored the Supreme Court’s exhortations regarding the propriety of a 4:1 limit in cases where the reprehensibility was not extreme. Moreover, the court certainly did not conduct the “exacting appellate review” that *State Farm* requires. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003).

85. Further evidence of *State Farm's* impact on awards in this range is the Supreme Court’s decision to vacate and remand, for further consideration in light of *State Farm*, several cases that involved ratios around the double-digit threshold. See *Chrysler Corp. v. Clark*, 540 U.S. 801 (2003) (vacating a judgment that upheld a 12.7:1 ratio); *Cass v. Stephens*, 538 U.S. 1054 (2003) (vacating a judgment that upheld a 24.7:1 ratio); *Nat’l Union Fire Ins. Co. v. Textron Fin. Corp.*, 538 U.S. 974 (2003) (vacating a judgment that upheld a 10.3:1 ratio); *Anchor Hocking, Inc. v. Waddill*, 538 U.S. 974 (2003) (vacating a judgment that upheld a 9.9:1 ratio).

C. *Compensatory Damages Or Potential Harm of \$500,000 or Greater: Courts Reject Double-Digit Ratios and Expressly Recognize the 4:1 Ratio Benchmark but not the 1:1 Benchmark*

In cases where the compensatory award or potential harm is \$500,000 or greater, double-digit ratios have generally been reduced to single digits. Indeed, only three decisions in this category have upheld a double-digit ratio.<sup>86</sup> As with compensatory awards in the low six figures, the U.S. Supreme Court granted, vacated, and remanded several punitive damages cases in which compensatory awards were above \$500,000.<sup>87</sup> That many of these cases involved ratios around 10:1, or even into the low-to-mid single digits, has demonstrated to the lower courts that searching review of *any* punitive award is necessary when the compensatory award reaches the mid-six figures.

In the seventy post-*State Farm* cases involving damages or potential harm of \$500,000 or more,<sup>88</sup> the vast majority of courts have abided by the 4:1 benchmark.<sup>89</sup> Surprisingly, however, the courts have rarely reduced punitive awards to levels that would yield ratios *below* 4:1, despite the indisputable existence of a substantial compensatory award that completely compensates the plaintiff for his injuries – a situation in which the Supreme Court has indicated a 1:1 ratio is often the consti-

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86. See *infra* App. D.

87. See *Philip Morris USA Inc. v. Williams*, 540 U.S. 801 (2003) (vacating a judgment that upheld a 96.3:1 ratio where compensatory damages were \$825,486); *Ford Motor Co. v. Romo*, 537 U.S. 371 (2003) (vacating a judgment that upheld a 58.0:1 ratio where compensatory damages were \$5 million); *Ford Motor Co. v. Smith*, 538 U.S. 1028 (2003) (vacating a judgment that upheld a 5:1 ratio where compensatory damages were \$3 million); *DeKalb Genetics Corp. v. Bayer CropScience, S.A.*, 538 U.S. 974 (2003) (vacating a judgment that upheld a 3.3:1 ratio where compensatory damages were \$15 million); *Key Pharms., Inc. v. Edwards*, 538 U.S. 974 (2003) (vacating a judgment that upheld a 10.4:1 ratio where compensatory damages were \$5.5 million).

88. See *infra* App. D. This appendix contains two cases in which the pre-review compensatory award equaled or exceeded \$500,000 but the post-review compensatory award did not. See *Gober v. Ralphs Grocery Co.*, 40 Cal.Rptr.3d 92 (Cal. App. 2006); *Citizens Nat'l Bank v. Allen Rae Inv., Inc.*, 142 S.W.3d 459 (Tex. App. Fort Worth 2004).

89. See *infra* App. D.

tutional maximum.<sup>90</sup> Only five courts have ordered a remittitur of a punitive award to a 1:1 (or slightly greater) ratio:<sup>91</sup> the Southern District of New York in *TVT Records* (addressing a compensatory award of nearly \$28 million);<sup>92</sup> the California Court of Appeal in *Czarnik v. Illumina, Inc.* (addressing a compensatory award of \$2.2 million);<sup>93</sup> the Arizona federal district

90. Among the few courts that have done so, most have expressly recognized that the compensatory award was substantial. See *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (\$600,000 compensatory award); *Stogsdill v. Healthmark Partners L.L.C.*, 377 F.3d 827, 833 (8th Cir. 2004) (\$500,000 compensatory award); *Bogle v. McClure*, 332 F.3d 1347, 1362 (11th Cir. 2003) (\$500,000 compensatory award for each of seven plaintiffs); *TVT Records v. Island Def Jam Music Group*, 279 F. Supp. 2d 413, 450 (S.D.N.Y. 2003) (\$23.78 million compensatory award), *vacated on other grounds*, 412 F.3d 82 (2d Cir. 2005); *Eden Elec. Ltd. v. Amana Co.*, 258 F. Supp. 2d 958, 972 (\$2.1 million compensatory award); *Henley v. Philip Morris Inc.*, 9 Cal. Rptr. 3d 29, 73 (Cal. App.) (\$1.5 million compensatory award), *review granted*, 88 P.3d 497 (Cal. 2004).

In one case involving \$2.1 billion in compensatory damages and \$2.1 billion in punitive damages, the court remanded the amount of punitive damages for reconsideration even though the ratio was only 1:1. See *Motorola Credit Corp. v. Uzan*, 388 F.3d 39 (2d Cir. 2004). According to the *Uzan* Court, the ratio guidepost was not “relevant” because “[t]here is no disparity between the size of the award and the actual harm suffered by the plaintiffs.” *Id.* at 63, n.19. Rather, the award was potentially excessive because the economic fraud involved in the case simply was not that reprehensible and there was an issue about the defendants’ ability to pay the punitive damages award. *Id.* at 63-65. On remand, the court reduced the punitive award to \$1 billion but never discussed the ratio guidepost. *Motorola Credit Corp. v. Uzan*, No. 02 Civ. 0666, 2006 WL 290210, at \*3-\*4 (S.D.N.Y. Feb. 8, 2006).

91. *United States v. Bailey*, 288 F. Supp. 2d 1261 (M.D. Fla. 2003), *aff’d on other grounds*, 419 F.3d 1208 (11th Cir. 2005), is not included in this figure because the court did not determine an appropriate ratio upon concluding that the punitive award was excessive. Likewise, *Asa-Brandt, Inc. v. ADM Investor Servs., Inc.*, 344 F.3d 738 (8th Cir. 2003), *La Jolla Cove Motel & Hotel Apartments, Inc. v. Jackman*, No. D045000, 2006 WL 401268 (Cal. App. Feb. 21, 2006), and *In re John Richards Homes Bdg. Co.*, 439 F.3d 248 (6th Cir. 2006), are not included because the ratio in these cases started off as 1:1 or below.

92. *TVT Records*, 279 F. Supp. 2d at 451 (because plaintiff “was awarded the full amounts it asked for[,] . . . any punitive recovery beyond that amount would be more than necessary to achieve the level of retribution and deterrence appropriate to this case and would constitute a windfall”), *vacated on other grounds*, 412 F.3d 82 (2d Cir. 2005) (Mayer, Brown, Rowe & Maw represented one of the two defendants in this case).

93. *Czarnik v. Illumina, Inc.*, No. D041034, 2004 WL 2757571 (Cal. App. Dec. 3, 2004) (ordering that punitive award of \$5,000,000 be reduced to \$2,196,935).

court in *Ceimo v. General American Life Insurance Co.* (addressing a compensatory award of \$6.7 million), a decision that was affirmed in an unpublished opinion in the Ninth Circuit;<sup>94</sup> and the Eighth Circuit in both *Williams v. ConAgra Poultry Co.* (addressing a compensatory award of \$600,000)<sup>95</sup> and *Boerner v. Brown & Williamson Tobacco Co.* (addressing a compensatory award of \$4,025,000).<sup>96</sup>

Indeed, most of the other lower courts have neither addressed *State Farm's* mention of a 1:1 ratio nor attempted to determine a suitable "lesser" ratio on the facts before them. Rather, they have essentially read that discussion out of the *State Farm* opinion.<sup>97</sup> Illustrative of this trend are the Eighth Circuit's opinion in *Stogsdill v. Healthmark Partners, L.L.C.*

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94. *Ceimo v. General American Life Ins. Co.*, No. 03-16882, 03-16930, 2003 WL 24027024 (D. Ariz. Apr. 22, 2003), *aff'd*, *Ceimo v. General American Life Ins. Co.*, Nos. 03-16882, 03-16930, 2005 WL 1523445 (9th Cir. June 29, 2005) (Mayer, Brown, Rowe & Maw represented the defendants in this case).

95. *Williams v. ConAgra Poultry Co.*, 378 F.3d 790 (8th Cir. 2004) (ordering that punitive award of \$6,063,750 be reduced to \$600,000). In *Pollard v. E.I. DuPont De Nemours, Inc.*, 412 F.3d 657 (6th Cir. 2005), the Sixth Circuit affirmed a \$2.5 million punitive award where the compensatory award was \$2.2 million, observing that the ratio between punitive and compensatory damages "is almost the 1-to-1 ratio mentioned in *Campbell* for the largest awards." *Id.* at 668.

96. *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594 (8th Cir. 2005). In *Watson v. E.S. Sutton, Inc.*, No. 02 Civ. 2739, 2005 WL 2170659 (S.D.N.Y. Sept. 6, 2005), the court reduced a punitive award from \$2,500,000 to \$717,000 where the compensatory award was around \$1.5 million (after the amount of emotional damages was reduced). Although suggesting that a 1:1 ratio might be the constitutional maximum in this circumstance, the court never stated what it considers the constitutional maximum to be. *See id.* at \*18. Rather, it concluded that the punitive award should be reduced to "approximately 50% of the compensatory damages awarded," which "is less than the maximum that would be constitutionally permissible." *Id.* at \*19. For other 1:1 cases where the compensatory award was less than \$500,000, see *supra* notes 61-65 (discussing *Clark* and *Campusang*).

97. The confusion of the lower courts on the application of the 1:1 ratio is exemplified by the *Henley* court, which misread *State Farm* in concluding that "where a plaintiff has been fully compensated with a substantial compensatory award, any ratio over 4 to 1 is 'close to the line.'" *Henley v. Philip Morris Inc.*, 9 Cal. Rptr. 3d 29, 73 (Cal. App.), *cert denied* 126 S. Ct. 315 (2005) (Mayer, Brown, Rowe & Maw filed a petition for certiorari for Philip Morris in this case. The petition was denied.).

(where the compensatory damages award was \$500,000);<sup>98</sup> the Ninth Circuit's decisions in *Greenberg v. Paul Revere Life Insurance Co.* (where the compensatory award was \$547,442);<sup>99</sup> and *Hangarter v. Provident Life & Accident Insurance Co.* (where the compensatory award was \$1,920,849).<sup>100</sup> In *Stogsdill*, the panel explicitly endorsed a 4:1 ratio "as the appropriate due process maximum" despite its recognition that the \$500,000 compensatory award was "substantial."<sup>101</sup> In *Greenberg*, the panel stated that the ratio of 4.4 to 1 was "similar to the 4:1 ratio in *BMW* and well within the 'single digit ratio' that marks the outer limit of permissible disparities."<sup>102</sup> And in *Hangarter*, the panel asserted that *Gore* and *State Farm* had "*consistently rejected*" the notion that a 1:1 ratio should apply when compensatory damages were substantial, going so far as to say that "*State Farm's* 1:1 compensatory to punitive damages ratio is not binding, no matter how factually similar the cases may be."<sup>103</sup> This partial application of *State Farm* is particularly inexplicable in cases where "[t]he harm arose from a transaction in the economic realm, not from some physical assault or trauma [and] there [a]re no physical injuries."<sup>104</sup>

98. *Stogsdill v. Healthmark Partners, L.L.C.*, 377 F.3d 827 (8th Cir. 2004).

99. *Greenberg v. Paul Revere Life Ins. Co.*, No. 02-16501, 2004 WL 74630 (9th Cir. Jan. 12, 2004) (Mayer, Brown, Rowe & Maw represented Paul Revere Life Insurance Co. in this case).

100. *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998 (9th Cir. 2004). (Mayer, Brown, Rowe & Maw represented the defendants in this case).

101. *Stogsdill*, 377 F.3d at 833-34 (reducing \$5 million punitive award to \$2 million); *cf.* *Eden Elec., Ltd. v. Amana Co.*, 370 F.3d 824 (8th Cir. 2004) (refusing to reduce a \$10 million punitive award where compensatory damages were \$2.1 million, and never addressing the 1:1 requirement) (Mayer, Brown, Rowe & Maw filed an amicus brief of the Chamber of Commerce of the United States in support of Amana Co. in this case).

102. *Greenberg*, 2004 WL 74630, at \*2.

103. *Stogsdill*, 373 F.3d at 1014-15 & n.11 (emphasis in original).

104. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003); *see also Eden Elec.*, 370 F.3d at 828 (affirming a 4.8:1 ratio (which had previously been reduced from 8.5:1) where compensatory damages were \$2.1 million, noting that the court "can hardly think of a more reprehensible case of business fraud"); *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 345 F.3d 1366 (Fed. Cir. 2003) (affirming 3.3:1 ratio where compensatory damages were \$15 million for fraud); *Bogle v. McClure*, 332 F.3d 1347, 1362 (11th Cir. 2003) (reducing 4:1 ratio to 3.8:1 where compensatory damages were \$3.5 million for race discrimination); *Chicago Title Ins. Corp. v.*

Compounding the problem, several decisions in this group have disregarded the 4:1 benchmark and allowed

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Magnuson, No. 2:03-CV-368, 2005 WL 2373430, at \*11 (S.D. Ohio Sept. 26, 2005) (affirming \$32.4 million punitive damages award in tortious interference case where the compensatory award was \$10.8 million, and stating that “[n]o binding precedent imposes a limit of a ratio of 1:1”); Hussein v. Universal Dev. Mgmt., Inc., 2006 U.S. Dist. LEXIS 49, at \*31-\*33 (W.D. Pa. Jan. 2, 2006) (affirming \$1.6 million punitive damages award for trespass and invasion of privacy where compensatory damages were \$850,000 even though the court was “fairly confident that \$850,000 fully compensates Plaintiff for his actual damages;” no reference was made to *State Farm*’s suggestion that a 1:1 ratio might be appropriate in these circumstances); Day v. Ingle’s Markets, Inc., No. 2:01-CV-325, 2006 WL 239290, at \*15 (E.D. Tenn. Jan. 25, 2006) (upholding \$2.5 million punitive award for malicious prosecution where \$500,000 in compensatory damages were awarded for court costs, lost wages, mental anguish, pain and suffering, and loss of enjoyment of life because “the Sixth Circuit has recognized that cases where injuries are without a ready monetary value, such as this case involving impairment to reputation and impairment of liberty rights, as well as emotional injuries, then higher ratios between compensatory and punitive damages are to be expected”) (citing *Argentine v. United Auto Workers of Am.*, AFL-CIO, 287 F.3d 476, 488 (6th Cir. 2002)); *Jurinko v. The Medical Protective Co.*, No. 03-CV-4053, 2006 WL 785234, at \*7 (E.D. Pa. Mar. 29, 2006) (upholding punitive award of \$6.25 million that was 3.8 times the compensatory award of \$1.66 million on the basis that “an award of more than four times the amount of compensatory damages might be close to the line of constitutional propriety, especially when the compensatory damages are substantial”).

The Oregon Court of Appeals’ recent decision in *Goddard v. Farmers Insurance Co. of Oregon*, 120 P.3d 1260 (Or. App. Oct. 12, 2005), was perhaps slightly more faithful to *State Farm*. In that case, the jury awarded \$863,274 in compensatory damages and \$20,718,576 in punitive damages for insurance bad faith (the mishandling of a wrongful death claim). The court held the punitive award unconstitutionally excessive and reduced it to \$3,840,000 for a ratio of 3:1. (The court awarded prejudgment interest, increasing the amount of compensatory damages; *id.* at 1277-78.). It settled on this ratio, observing that the conduct was more reprehensible than the bad faith in *State Farm* (where the Supreme Court suggested that a 1:1 ratio was appropriate) because there was evidence of recidivism, but the conduct was less reprehensible than that in *Waddill* (where the court reduced the punitive damages to a 4:1 ratio) because no “serious physical injury or disregard for the health and safety of the consuming public” was involved. *Id.* at 1284. (On reconsideration, the court confirmed the “propriety of including prejudgment interest in the ‘compensatory’ component of the ratio” because it was part of the “actual harm” to the plaintiff.” *Goddard v. Farmers Ins. Co. of Ore.*, Nos. 9005-03204, A118750, 2006 WL 120841, at \*2-\*3 (Or. App. Jan. 18, 2006).).

higher ratios to stand.<sup>105</sup> Some of these courts expressly recognized the 4:1 limit yet upheld a higher single-digit ratio upon concluding that the defendant's conduct was sufficiently reprehensible to warrant an upward adjustment.<sup>106</sup> For example, in *Henley v. Philip Morris Inc.*,<sup>107</sup> a California individual-smoker case, the court held that the \$25 million punitive award was unconstitutionally excessive and reduced it to \$9 million, or six times the \$1.5 million compensatory award. The court observed that "where a plaintiff has been fully compensated with a substantial compensatory award, any ratio over 4 to 1 is 'close to the line,'" but it concluded that the 6:1 ratio was justified by what it viewed as "the [defendant's] extraordinarily reprehensible conduct of which plaintiff was a direct victim."<sup>108</sup>

In *Boeken v. Philip Morris Inc.*,<sup>109</sup> another individual-smoker case, the compensatory award exceeded \$5.5 million – unquestionably a substantial sum. The California Court of Appeal nevertheless refused to follow *State Farm's* admonition that where "compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can

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105. See *Greenberg v. Paul Revere Life Ins. Co.*, No. 02-16501, 2004 WL 74630 (9th Cir. Jan. 12, 2004) (upholding 4.4:1 ratio); *Diesel Mach., Inc. v. B.R. Lee Indus., Inc.*, 328 F. Supp. 2d 1029 (D.S.D. 2003) (upholding 6.5:1 ratio against excessiveness challenge although reducing the award on non-constitutional grounds); *Union Pac. R.R. Co. v. Barber*, 149 S.W.3d 325 (Ark. 2004) (upholding 4.9:1 ratio).

106. In *Bocci v. Key Pharmaceuticals, Inc.*, 76 P.3d 669 (Or. App. 2003), a case that involved the defendant's allegedly negligent and fraudulent conduct that led to a patient's permanent brain damage, the exceptionally plaintiff-friendly Oregon Court of Appeals recognized that a 4:1 ratio between punitive and compensatory damages "apparently is something of a benchmark" for the Supreme Court." *Id.* at 675. The court nevertheless reduced the punitive award from \$22.5 million to \$3.5 million, resulting in punitive damages equal to seven times the \$500,000 compensatory award, reasoning that the defendant's "deceitful conduct involving the promotion of a prescription drug as 'safe' when it was not . . . resulted in misdiagnosis and consequent severe physical injury." *Id.* at 676 (Mayer, Brown, Rowe & Maw filed an amicus brief for the Chamber of Commerce of the United States in support of Key Pharmaceuticals).

107. *Henley v. Philip Morris Inc.*, 9 Cal. Rptr. 3d 29 (Cal App. 2004).

108. *Id.* at 73.

109. *Boeken v. Philip Morris Inc.*, 26 Cal. Rptr. 3d 638 (Cal. App. 2005), cert. denied No. 05-594, 2006 WL 684912 (U.S. Mar. 20, 2006). (Mayer, Brown, Rowe & Maw filed a petition for certiorari for Philip Morris).

reach the outermost limit of the due process guarantee.”<sup>110</sup> It asserted that “this argument leads to the unsupportable proposition that those who commit the most devastating and reprehensible wrongs are given caps on their punitive damages exposure which those who commit lesser wrongs do not receive – a proposition standing the legitimate and necessary role of punitive damages on its head.”<sup>111</sup> The court concluded that a 9:1 ratio was warranted in light of the long duration of the alleged fraud and the defendant’s wealth, and therefore reduced the punitive award from \$100 million to \$50 million.<sup>112</sup>

Even more unfaithful to *State Farm* is the Oregon Supreme Court’s recent opinion in *Williams v. Philip Morris Inc.*,<sup>113</sup> another case that the Supreme Court remanded for further consideration in light of *State Farm*. In *Williams*, the Oregon Su-

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110. *Id.* at 681.

111. *Id.*

112. *Id.* at 687. The jury had initially awarded \$3 billion in punitive damages, but that amount had previously been reduced to \$100 million.

113. *Williams v. Philip Morris Inc.*, 127 P.3d 1165 (Or. 2006) (Mayer, Brown, Rowe & Maw has filed a petition for certiorari on behalf of Philip Morris in this case). After the Supreme Court granted the petition for certiorari, vacated the judgment of the court below and remanded the case for further consideration, the Oregon Court of Appeals had reinstated the jury’s \$79.5 million punitive award. *Williams v. Philip Morris Inc.*, 92 P.3d 126, 141-42 (Or. App. 2004). Despite acknowledging that the actual damages to the plaintiff amounted to \$821,486, the court stated that the “potential harm” was much higher, because the “tobacco industry and defendant directed the same conduct toward thousands of smokers in Oregon,” and “it would have been reasonable for the jury to infer that at least 100 members of the Oregon public had been misled by defendant’s advertising scheme over a 40-year period in the same way that Williams had been misled.” *Id.* at 145. Based on this “conservative calculation . . . [of] the potential magnitude of damage to the public,” the court concluded that “the ratio between compensatory and punitive damages . . . fall[s] within *State Farm*’s 4-to-1 boundary.” *Id.* The Oregon Supreme Court explained that the Court of Appeals had erred in considering the potential harm to other Oregonians:

Using harm to others as part of the ratio may have been correct under the plurality opinion in *TXO Production Corp. v. Alliance Resources Corp.* However, it no longer appears to be permissible (if it ever was) to factor in that consideration. Although *Campbell* held that similar acts could bear on reprehensibility . . . it now appears that harm to others should not be considered as part of the ratio guidepost.

*Williams*, 127 P.3d at 1180 (citations omitted).

preme Court broke free from the *State Farm* ratio framework entirely: it reaffirmed a \$79.5 million punitive award that was 97 times the compensatory award. The court recognized that “[a]ll arguable versions of the ratios substantially exceed the single-digit ratio (9:1) that the Court has said ordinarily will apply in the usual case.”<sup>114</sup> But it reasoned that “the other two guideposts – reprehensibility and comparable sanctions – can provide a basis for overriding the concern that may arise from a double-digit ratio.”<sup>115</sup> Thus, the Oregon Supreme Court simply ignored the ratio guidepost – an approach that clearly cannot be squared with *State Farm*. Even when misconduct is “extraordinarily reprehensible,” *State Farm* – and the ratio guidepost in particular – still sets an upper limit on the amount of punitive damages that may be awarded. That upper limit was far surpassed in *Williams*.<sup>116</sup>

Not all of the flawed decisions have involved tobacco company defendants. One particularly erroneous ruling is the Utah Supreme Court’s decision on remand in *State Farm* itself,<sup>117</sup> which essentially turned the Supreme Court’s opinion on its head. The Utah court first held that the trial court’s reduction of the compensatory award from \$2.6 million to \$1 million purged that award of any punitive component,<sup>118</sup> ignoring the Supreme Court’s observation that, *by their very nature*, emotional distress damages *always* contain a punitive element.<sup>119</sup> The court then proceeded to hold that the Supreme

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114. *Id.* at 1181.

115. *Id.* The Oregon Supreme Court expressed uncertainty as to the proper denominator for ratio analysis because it was unsure whether it should use the “capped” or “uncapped” amount of non-economic damages. *Id.* at 1180. Using the capped amount as the denominator would have produced a ratio of 152:1.

116. Imagine, for instance, that the punitive award was in *Williams* \$795 million instead of \$79.5 million. Nothing in the Oregon Supreme Court’s analysis would provide a basis to hold the former excessive while the latter constitutionally permissible. Yet *State Farm* clearly commands that where “a more modest punishment for . . . reprehensible conduct could have satisfied the State’s legitimate objectives, . . . [the court should go] no further.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419-20 (2003)

117. *Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409 (Utah 2004), *cert. denied*, 125 S. Ct. 114 (2004). (Mayer, Brown, Rowe & Maw filed an amicus brief for the National Association of Manufacturers in support of State Farm’s petition for certiorari in this case.)

118. *Campbell*, 98 P.3d at 418.

119. *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003).

Court's suggestion of a 1:1 ratio is relevant *only* in cases involving "conduct of unremarkable reprehensibility"<sup>120</sup> – a conclusion that finds no support in the Supreme Court's opinion. Like the Oregon Supreme Court in *Williams*, the Utah court missed a key point: conduct of "unremarkable reprehensibility" cannot support *any* award of punitive damages. The court compounded its error by concluding, contrary to the Supreme Court's reasoning, that the large size of the compensatory award, coupled with the non-economic nature of the harm to the plaintiffs, justified a *higher* multiple of punitive to compensatory damages – in this case, 9:1, yielding a punitive award of more than \$9 million.<sup>121</sup>

Although adopting the same ultimate ratio as the Utah Supreme Court, the Ninth Circuit's recent opinion in *Planned Parenthood v. American Coalition of Life Activists* constitutes a materially less defiant response to the Supreme Court's guidance in *State Farm*. In *Planned Parenthood*, the jury imposed \$108.5 million in aggregate punitive damages against several defendants who had threatened and endangered the lives of doctors who performed abortions.<sup>122</sup> After holding that ratios should be examined on a "per plaintiff, per defendant" basis in multi-plaintiff, multi-defendant lawsuits,<sup>123</sup> the Ninth Circuit set forth a "rough framework for evaluating whether there is a reasonable relationship between the punitive damages award and the actual or likely harm associated with the wrongful conduct": Ratios up to 4:1 are "a good proxy for the limits of constitutionality" where there are "significant economic damages" but the misconduct is "not particularly egregious;" "a single-digit ratio greater than 4 to 1 might be constitutional" where the economic damages are significant but the misconduct was "more egregious;" and double-digit ratios may be allowed

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120. *Campbell*, 98 P.3d at 418.

121. *Id.*

122. *Planned Parenthood v. Am. Coal. of Life Activists*, 422 F.3d 949 (9th Cir. 2005).

123. *Id.* at 962. The district court had "compar[ed] the total joint and several liability of each defendant for compensatory damages (\$526,336.14) with that defendant's liability for punitive damages." *Id.* at 960. The Ninth Circuit criticized this methodology for "ha[ving a] distorting effect" on the ratios. *Id.* at 961. Rather, it clarified that punitive damages awards should be evaluated on a "plaintiff-by-plaintiff, defendant-by-defendant basis." *Id.* at 962.

where “there are insignificant economic damages but the behavior was particularly egregious.”<sup>124</sup> Applying this framework, the court held that a 9:1 ratio was appropriate in this case, even though “[m]ost of the compensatory awards are substantial,” because the conduct was particularly reprehensible and the compensatory damages understated the plaintiffs’ emotional distress.<sup>125</sup> It accordingly reduced the punitive awards to approximately \$4.7 million in the aggregate.

In our view, the “framework” announced in *Planned Parenthood* represents a good-faith effort to apply *State Farm*. Nonetheless, we believe that the court did err in holding that 4:1 – rather than 1:1, as *State Farm* suggests – is the upper limit when compensatory damages are substantial and the misconduct is not particularly reprehensible.

Two cases pending in the Ninth Circuit will test the *Planned Parenthood* framework. First, in *White v. Ford Motor Co.*,<sup>126</sup> the district court upheld a \$52 million punitive award despite the fact that the compensatory award was only around \$2.3 million.<sup>127</sup> Relying on many of the cases we consider “outliers,” the district court rejected Ford’s contention that “the maximum permissible ratio will vary directly with the degree of reprehensibility of the conduct and will vary inversely with the amount of compensatory damages,” asserting that “the appropriate ratio is not a matter of mathematics, but rather a matter of reasonableness, given the defendant’s conduct and the harm to the plaintiff.”<sup>128</sup> The court stated that *Mathias*’s ratio of approximately 37:1 was “a reasonable point of comparison,” even though the amount of compensatory damages in *Mathias* was far less, and remarked that “a single-digit multiplier does not necessarily form an appropriate limitation upon a punitive damages award” in a “malicious-conduct wrongful death action.”<sup>129</sup> The court ultimately settled

124. *Id.* at 962 (citations omitted).

125. *Id.* at 963.

126. *White v. Ford Motor Co.*, slip op., No. CV-N-95-279-DWH(VPC) (D. Nev. Mar. 15, 2005) (amending prior opinion of Sept. 1, 2004) (Mayer, Brown, Rowe & Maw is co-counsel to Ford in this case).

127. *Id.* at 45.

128. *Id.* at 40, 42.

129. *Id.* at 42-44 (citing *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998 (9th Cir. 2004); *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003); *Zhang v. Am. Gem Seafood, Inc.*, 339 F.3d 1020 (9th

on a 30:1 ratio as the constitutional maximum.<sup>130</sup> We believe that this verdict should not withstand appellate review under the “framework” set forth in *Planned Parenthood*.

Also currently pending in the Ninth Circuit is the latest appeal in the *Exxon Valdez* litigation arising from the 1989 grounding of the Exxon Valdez oil tanker in Prince William Sound.<sup>131</sup> The Alaska district court addressed, for the third time, the constitutionality of the jury’s \$5 billion punitive award to a class of plaintiffs alleging property damage. The district court rejected the Ninth Circuit’s suggestion that the actual harm figure should be reduced by the amount of certain voluntary payments made by Exxon prior to judgment, and concluded that the actual harm to the plaintiffs as a result of Exxon’s conduct amounted to \$513.1 million – resulting in a 9.74:1 ratio of punitive damages to actual harm.<sup>132</sup> Focusing exclusively on *State Farm*’s reference to single-digit multipliers, the district court further concluded that this ratio passed constitutional muster in light of the unquantified potential harm, the reprehensibility of Exxon’s conduct, the “relatively small” \$15,704 average share of the compensatory award to each of the 32,677 plaintiffs, and the absence of a punitive component in the compensatory award.<sup>133</sup> In seeming disregard of the considerable deterrent effects of damage to Exxon’s goodwill and its enormous liability for clean-up costs, fines, and other payments to the government, the court found that there was no risk of over-deterrence because there was no evidence that

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Cir. 2003); *Planned Parenthood v. Am. Coal. of Life Activists*, 300 F. Supp. 2d 1055 (D. Or. 2004); *In re the Exxon Valdez*, 296 F. Supp. 2d 1071 (D. Alaska 2004); *S. Union Co. v. S.W. Gas Corp.*, 281 F. Supp. 2d 1090 (D. Ariz. 2003), *vacated* 415 F.3d 1001 (9th Cir. 2005); *Romo v. Ford Motor Co.*, 6 Cal. Rptr. 3d 793 (Cal. App. 2003)).

130. *Id.* at 44. The court noted that a Nevada Supreme Court decision issued in 1988 – before *BMW* and *State Farm* were decided – had affirmed a punitive verdict yielding that ratio, and it asserted that the mere existence of that award provided Ford with “fair notice” that a 30:1 ratio could be imposed. *Id.* (citing *Ainsworth v. Combined Ins. Co. of Am.*, 763 P.2d 673 (Nev. 1988)). That decision involved a substantially smaller compensatory award (\$200,000) and did not analyze whether the punitive award was proportionate to the harm caused, as *BMW* and *State Farm* require. *Ainsworth*, 763 P.2d at 677. At that time, Nevada law merely required the court to consider whether the punitive award would provide adequate deterrence. *Id.*

131. *In re the Exxon Valdez*, 296 F. Supp. 2d 1071 (D. Alaska, 2004).

132. *Id.* at 1101-03.

133. *Id.* at 1106.

“the deterrent effect of Exxon’s costs (or the punitive damages) threatened the socially valuable availability of moderately priced fuel” and “[t]here is absolutely no chance of a \$5 billion punitive damages award amounting to an economic death sentence of Exxon.”<sup>134</sup> The district court nevertheless reduced the amount of punitive damages to \$4.5 billion for a ratio of 9:1.<sup>135</sup> Whether this award will withstand appellate review is questionable at best.

Likewise among the outliers is the Texas Court of Appeals’ recent decision in *Mission Resources, Inc. v. Garza Energy Trust*.<sup>136</sup> In *Mission Resources*, the defendant committed a sub-surface trespass, which also amounted to “felony theft” of certain mineral rights. The jury awarded \$10 million in punitive damages and \$1 million in compensatory damages. The trial court reduced the compensatory award to \$543,776 to conform to the evidence, but entered judgment on the \$10 million punitive award. The court of appeals affirmed, even though “[t]he ratio in this case is approximately 20 to 1.”<sup>137</sup> “Admittedly,” the court explained, this ratio “exceeds the ‘single-digit multipliers,’ which, according to the Supreme Court, ‘are more likely to comport with due process.’”<sup>138</sup> But the single-digit ratio rule, it asserted, is “not a bright-line rule forbidding ratios exceeding 10 to 1.”<sup>139</sup> “[T]he highly unlawful nature of [the defendant’s] conduct (it being a breach of contract, an intentional tort, and felony theft),” the court explained, “prevents [us] from concluding that the ratio 20 to 1 was grossly excessive.”<sup>140</sup>

This analysis is impossible to reconcile with *State Farm*. The *State Farm* court carved out no exception to the single-digit rule for cases of high reprehensibility; rather, those are the cases in which the ratio *may* reach the top of the single-digit range, *if* the compensatory award is not substantial. Given that the compensatory award was undeniably substan-

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134. *Id.* at 1105.

135. *Id.*

136. *Mission Res., Inc. v. Garza Energy Trust*, 166 S.W.3d 301 (Tex. App. Corpus Christi 2005).

137. *Id.* at 319.

138. *Id.*

139. *Id.*

140. *Id.*

tial, only a ratio at the lower end of the single-digit range was appropriate.<sup>141</sup>

In sum, when compensatory damages or potential harm are \$500,000 or higher, lower courts have generally recognized that the maximum permissible ratio cannot exceed 4:1. Some lower courts have made a slight upward adjustment to the ratio upon finding that the defendant's conduct was particularly reprehensible. But the courts have all but ignored *State Farm's* recommendation of a 1:1 ratio in these cases, despite the inarguably substantial and fully-compensating awards of actual damages. Indeed, a few courts have even upheld ratios in the high single digits despite the substantial compensatory damages.

Nonetheless, as noted above, some lower court panels have heeded *State Farm's* admonition that a lower ratio is appropriate where the amount of compensatory damages is substantial, including the Eighth Circuit's opinions in *Williams v. ConAgra Poultry Co.* and *Boerner v. Brown & Williamson Tobacco Corp.*, and the California Court of Appeal's decision in *Czarnik v. Illumina*.<sup>142</sup>

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141. The same is true for the Middle District of Alabama's recent decision in *Action Marine, Inc. v. Continental Carbon, Inc.*, No. 3:01-CV-994-MEF, 2006 WL 173653 (M.D. Ala. Jan. 23, 2006). In that case, a jury awarded \$17.5 million in punitive damages and \$1,915,000 in aggregate compensatory damages for property damages allegedly resulting from the release of carbon black during the manufacturing process. *Id.* at \*2. On post-trial motions, the court upheld the punitive award, stating in a footnote that "[t]he ratio of punitive damages to compensatory damages is 9.14:1" and, "in its view[ ], the facts of this case could have supported an even higher multiple." *Id.* at \*6 n.6. Citing a pre-*State Farm* case in which the punitive and compensatory awards were far lower, but the ratio was "around 100 times the amount of actual damages awarded by the jury," the court stated that "a strong state interest in deterrence of a particular wrongful act may justify ratios higher than might otherwise be acceptable." *Id.* (citing *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1339 (11th Cir. 1999)). This ratio analysis was very conclusory. Indeed, the court never explained why the compensatory award of almost \$2 million failed to deter or punish the defendants adequately. Nor did it even attempt to come to grips with the Supreme Court's admonition that, when compensatory damages are substantial, a punitive award "at or near" the amount of compensatory damages is the likely constitutional maximum. *State Farm*, 538 U.S. at 429. (Mayer, Brown, Rowe & Maw currently represents Continental Carbon Co. in its appeal in the Eleventh Circuit).

142. In *Ceimo v. General American Life Insurance Co.*, Nos. 03-16882, 03-16930, 2005 WL 1523445 (9th Cir. June 29, 2005), the jury awarded \$79 million in punitive damages and \$6,692,610.60 in compensatory damages.

In *ConAgra*, an employment discrimination decision authored by Judge Morris Sheppard Arnold, the court noted that “one should not overstate the extent of the Court’s aversion to ratios,” as “the mathematics alerts the courts to the need for special justification.”<sup>143</sup> Deeming the \$600,000 compensatory award “a lot of money,” the panel reduced the punitive award from \$6 million to \$600,000.<sup>144</sup>

In *Boerner*, the jury had awarded a smoker just over \$4 million in compensatory damages and \$15 million in punitive damages on a design defect claim.<sup>145</sup> Although the court of appeals found the defendant cigarette manufacturer’s conduct to be “highly reprehensible” because it “exhibited a callous disregard for the adverse health consequences of smoking,” the court concluded that “a ratio of approximately 1:1 would comport with the requirements of due process.”<sup>146</sup> It pointed to the holding in *ConAgra* and other Eighth Circuit opinions, as well as the fact that “[f]actors that justify a higher ratio, such as the presence of an ‘injury that is hard to detect’ or a ‘particularly egregious act [that] has resulted in only a small amount of economic damages,’ are absent here.”<sup>147</sup> It therefore reduced the punitive verdict to \$5 million for a punitive to compensatory ratio of approximately 1.2:1.<sup>148</sup>

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The district court reduced the punitive award to \$7,000,000, stating that because “the compensatory damages are substantial,” “the Constitution constrains us to reduce the punitive damages award in this case to an amount roughly equal to the compensatory damages.” *Ceimo v. General Am. Life Ins. Co.*, No. CV-00-1386-PHX-FJM, 2005 WL 1523445, at \*4 (D. Az. Apr. 22, 2003). The Ninth Circuit cursorily affirmed, stating that “[w]e agree with the district court’s analysis and uphold its remittitur.” *Ceimo*, 2005 WL 1523445, at \*1.

143. *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004).

144. *Id.* In *ConAgra*, punitive damages were also awarded for the wrongful discharge of the plaintiff, but the defendants did not challenge this award on appeal (which the district court had already reduced to a 3:1 ratio). *Id.* at 793.

145. *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 598 (8th Cir. 2005).

146. *Id.* at 602-03.

147. *Id.* at 603 (citations omitted).

148. *Id.* Judge Bye concurred in the result, remarking that the punitive reduction was required due to instructional error. *Id.* at 606-07. He nevertheless noted that the majority’s holding was inconsistent with other Eighth Circuit precedent that intimated that a 4.5:1 ratio was within constitutional limits. *Id.* at 604-05 (citing *Eden Elec., Ltd. v. Amana Co.*, 370 F.3d 824, 829

Similarly, in *Czarnik*,<sup>149</sup> the California Court of Appeal held that a \$5 million punitive award was “grossly excessive” where the jury had awarded \$2.2 million in compensatory damages for various disability discrimination and wrongful discharge claims. Although remarking that a 2.3:1 ratio of punitive to compensatory damages did “not have to be justified by extraordinary circumstances to pass constitutional muster,” the court noted that the “\$2.2 million compensatory damage award was without question ‘substantial.’”<sup>150</sup> Because the defendant’s “conduct was not highly reprehensible,” the court concluded that “a 1:1 ratio of punitive to compensatory damages is the maximum award that is sustainable against a due process challenge.”<sup>151</sup>

### III.

#### CONCLUSION

In the three years since the Supreme Court’s decision in *State Farm*, the lower courts have consistently recognized the general applicability of *State Farm*’s analysis of the ratio guidepost and its statement that a punitive award that exceeds a single-digit multiplier of compensatory damages generally will not satisfy due process. Ratios in the double digits or higher

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(8th Cir. 2004)). Indeed, shortly after *ConAgra* was decided, another panel of the Eighth Circuit held that a 2:1 ratio was the constitutional maximum even though the compensatory award was \$3.5 million. See *Conseco Fin. Servicing Corp. v. N. Am. Mortgage Co.*, 381 F.3d 811, 825 (8th Cir. 2004) (reducing an \$18 million punitive verdict to \$7 million in an unfair competition case where the compensatory award was \$3.5 million, on the assumption that “the foundation for [defendant]’s allegation of constitutional error” was the fact that the 5.1:1 ratio exceeded 4:1); cf. *Grefer v. Alpha Technical*, 901 So. 2d 1117, 1128, 1150-52 (La. App. 2005) (reducing \$1 billion punitive award to just over \$112 million where there were \$56 million in compensatory damages because *State Farm* “leaves little doubt that there is a presumption against an award that has an 18 to 1 ratio” and only “a lesser single-digit ratio would be appropriate”).

149. *Czarnik v. Illumina, Inc.*, No. D041034, 2004 WL 2757571, at \*10-11 (Cal. App. Dec. 3, 2004).

150. *Id.* at \*11.

151. *Id.* The court followed similar logic in reducing the punitive award in *Motorola Credit Corp. v. Uzan*, No. 02 Civ. 0666, 2006 WL 290210 (S.D.N.Y. Feb. 6, 2006). There, the court reduced the punitive award from approximately \$2.1 billion to \$1 billion where the compensatory damages were \$2.1 billion and “several of the *State Farm* factors do not appear to be present.” *Id.* at \*3; see also *supra* note 90 (discussing *Uzan*).

tend to be upheld only where the case fits into one of the exceptions expressly identified in *State Farm*. More specifically, punitive awards that are ten or more times a six-figure compensatory award are almost always reduced.

Unfortunately, the lower courts have not fared as well in implementing other aspects of the Supreme Court's guidance. A significant number of punitive awards producing ratios between 4:1 and 9.9:1 have simply been "rubber-stamped," even when the facts and circumstances of the case at issue indicated that more exacting review of the amount of punitive damages was warranted. Moreover, the Court's suggestion that 1:1 will often be the limit in cases where the compensatory award is "substantial" has been virtually ignored. Finally, some lower courts have followed the letter of *State Farm* but disregarded its spirit by manipulating the denominator to justify a particular punitive damages award.

In sum, *State Farm* clearly has had the general salutary effect of making the imposition and review of punitive damages fairer and more predictable, but there remain many courts that resist fully implementing *State Farm's* guidance. As a result, we think it inevitable that the Supreme Court will soon be forced to provide additional instruction in this volatile area.

APPENDIX A  
PUNITIVE AWARDS AND RATIOS WHERE COMPENSATORY AWARDS  
WERE \$25,000 OR LESS

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Rodriguez-Torres v. Caribbean Forms Mfr., Inc.</i> , 399 F.3d 52 (1st Cir. 2005) <sup>152</sup>	\$250,000	\$1	\$199,999 (reduced on non-constitutional grounds)	\$1	250,000	199,999
<i>Fabri v. United Techs. Int'l, Inc.</i> , 387 F.3d 109 (2d Cir. 2004)	\$500,000	\$1	NA <sup>153</sup>	\$1	500,000	NA
<i>Williams v. Kaufman County</i> , 352 F.3d 994 (5th Cir. 2003)	\$15,000	\$100	\$15,000	\$100	150.0	150.0
<i>Lincoln v. Case</i> , 340 F.3d 283 (5th Cir. 2003)	\$100,000	\$500	\$55,000	\$500	200.0	110.0
<i>Romanski v. Detroit Entm't, LLC</i> , 428 F.3d 629 (6th Cir. 2005)	\$875,000	\$279.50	\$600,000	\$279.50	3135	2147
<i>Mathias v. Accor Econ. Lodging, Inc.</i> , 347 F.3d 672 (7th Cir. 2003)	\$186,000	\$5,000	\$186,000	\$5,000	37.2	37.2
<i>Bowles v. Osmose Util. Servs., Inc.</i> , No. 05-2069, 2006 WL 783378 (8th Cir. Mar. 29, 2006)	\$80,000	\$20,000	\$80,000	\$20,000	4.0	4.0

152. In *Rodriguez-Torres v. Caribbean Forms Manufacturer, Inc.*, 399 F.3d 52 (1st Cir. 2005), the jury had awarded \$250,000 in punitive damages and the trial court reduced the award to \$199,999 to comport with the Title VII statutory cap. The First Circuit analyzed whether the \$199,999 punitive award was excessive.

153. NA = Court determined that punitive damages were unconstitutionally excessive, but did not make a determination as to the proper amount of such damages

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Kemp v. AT&amp;T</i> , 393 F.3d 1354 (11th Cir. 2004)	\$1,000,000	\$115.05	\$250,000	\$115.05	8691.9	2173.0
<i>Coosada Trucking Co. v. CITI Financial, USA, Inc.</i> , No. 2:01-CV-553-F, 2004 WL 3584072 (M.D. Ala. May 14, 2004)	\$1,300,000	\$4,480.67	\$17922.68	\$4,480.67	290.1	4.0
<i>Garamendi v. Altus Finance S.A.</i> , No. CV 99-2829, 2005 WL 3605274 (C.D. Cal. Oct. 4, 2005).	\$700 million	\$0	\$0	\$0	Undefined	Undefined
<i>Russo v. City of Hartford</i> , No. 3-97-CV-2380, 2006 WL 516747 (D. Conn. Mar. 2, 2006)	\$75,000	\$22,500	\$75,000	\$22,500	3.3	3.3
<i>Stack v. Jaffee</i> , 306 F. Supp. 2d 137 (D. Conn. 2003)	\$200,000	\$2,000	\$25,000	\$2,000	100.0	12.5
<i>Kunz v. City of Chicago</i> , 2005 U.S. Dist. LEXIS 24581 (N.D. Ill. Oct. 24, 2005)	\$250,000	\$10,000	NA	\$10,000	25.0	NA
<i>Waits v. City of Chicago</i> , No. 01 C 4010, 2003 WL 21310277 (N.D. Ill. June 6, 2003)	\$2,000,000	\$15,000	\$45,000	\$15,000	133.3	3.0
<i>Sherman v. Katsotakis</i> , 314 F. Supp. 2d 843 (N.D. Iowa 2004)	\$50,000	\$4	\$50,000	\$4	12500.0	12500.0

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Dunn v. Village of Put-In-Bay, Ohio</i> , No. 3:02CV7252, 2004 WL 169788 (N.D. Ohio Jan. 26, 2004)	\$23,422.50	\$1,577.50	\$23,422.50	\$1,577.50	14.8	14.8
<i>Sheedy v. City of Philadelphia</i> , No. Civ.A.03-06394JF, 2005 WL 375657 (E.D. Pa. Feb. 15, 2005) <sup>154</sup>	\$500,000 (the court assumed, for ratio purposes, that \$100,000 of this award was meant to compensate for non-economic damages)	\$3,075	\$300,000	\$3,075	162.6	97.6
<i>Tate v. Dragovich</i> , No. CIV.A. 96-4495, 2003 WL 21978141 (E.D. Pa. Aug. 14, 2003)	\$10,000	\$1	\$10,000	\$1	10,000.0	10,000.0
<i>Accevedo Luis v. Zayas</i> , Civil 03-1376, 2006 WL 592929 (D. Puerto Rico Feb. 28, 2006)	\$5,000	\$0	\$5,000	\$0	Undefined	Undefined
<i>Harrelson v. R.J.</i> , 882 So. 2d 317 (Ala. 2003)	\$75,000	\$15,000	\$75,000	\$15,000	5.0	5.0

154. In *Sheedy v. City of Philadelphia*, No. Civ.A.03-06394-JF, 2005 WL 375657 (E.D. Pa. Feb. 15, 2005), the court assumed that the compensatory award included only plaintiff's actual-out-of-pocket expenses and that \$100,000 of the punitive award was compensation for non-economic damages. Thus, the court used \$100,000 as the compensatory award for ratio purposes, and reduced the punitive award to \$300,000, claiming that the punitive portion was \$200,000 and the compensatory portion was \$100,000.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/ Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/ Compensatory (or Potential Harm) Ratio After Review
<i>Simon v. San Paolo U.S. Holding Co.</i> , 29 Cal. Rptr. 3d 379 (Cal. 2005) 155	\$1,700,000	\$5,000	\$50,000	\$5,000	340.0	10.0
<i>Johnson v. Ford Motor Co.</i> , 37 Cal. Rptr. 3d 283 (Cal. App. 2005), on remand from 29 Cal. Rptr. 3d 401 (Cal. 2005)	\$10 million	\$17,811.60	\$175,000	\$17,811.60	561.4	9.8
<i>Craig v. Holsey</i> , 590 S.E.2d 742 (Ga. App. 2003)	\$200,000	\$8,801.40	\$200,000	\$8,801.40	22.7	22.7
<i>Myers v. Workmen's Auto Ins. Co.</i> , 95 P.3d 977 (Idaho 2004)	\$300,000	\$735	\$300,000	\$735	408.1	408.1
<i>Lowe Excavating Co. v. Int'l Union of Op. Eng'rs, Local No. 150</i> , 832 N.E.2d 495 (Ill. App. July 8, 2005)	\$525,000	\$4,280	\$325,000	\$4,280	122.7	75.9
<i>Wolf v. Wolf</i> , 690 N.W.2d 887 (Iowa Jan. 7, 2005)	\$25,000	\$1	\$25,000	\$1	25,000	25,000
<i>Nemecek v. Santee</i> , No. 05-0518, 2006 WL 334298 (Iowa App. Feb. 15, 2006)	\$8,357.14	\$1	\$8,357.14	\$1	8,357	8,357

155. In *Simon v. San Paolo U.S. Holding Co.*, 29 Cal. Rptr. 3d 379 (Cal. 2005), the California Court of Appeal used the “potential harm” of \$400,000 instead of the “actual harm” of \$5,000. The California Supreme Court held this was improper.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Home Pride Foods of Iowa, Inc. v. Martin</i> , No. 02-1094, 2003 WL 23005185 (Iowa App. Dec. 24, 2003)	\$82,228	\$0	NA	\$0	Infinite	NA
<i>Haskell v. Tan World, Inc.</i> , No. LACV0416 37,2003 WL 24 054815 (Iowa Dist. Ct. Dec. 9, 2003)	\$250,000	\$10,000	\$40,000	\$10,000	25.0	4.0
<i>Krysa v. Payne</i> , 176 S.W.3d 150 (Mo. App. 2005)	\$500,000	\$18,449.53	\$500,000	\$18,449.53	27.1	27.1
<i>Rosenberg, Minc &amp; Armstrong v. Mallillo &amp; Grossman</i> , 798 N.Y.S.2d 322 (N.Y. Sup. Ct. 2005)	\$343,750	\$10,500	\$105,000	\$10,500	32.7	10.0
<i>Maskantz v. Hayes</i> , No. 102868/01, 2004 WL 2246192 (N.Y. Sup. Ct. Aug. 13, 2004)	\$250,000	\$10,000	\$100,000	\$10,000	25.0	10.0
<i>Weinfeld v. Welling</i> , No. 2004 CA003402005 WL 2175141 (Ohio App. Sept. 6, 2005) 156	\$250,000	\$5,412.38	\$35,000	\$5,412.38	46.2	6.5
<i>Pestco, Inc. v. Associated Prods., Inc.</i> , No. 11-03-00336-CV, 2005 WL 1792194 (Pa. Sup. Ct. July 29, 2005)	\$25,000	\$1	\$0	\$1	25000	0

156. In *Weinfeld v. Welling*, No. 2004CA00340, 2005 WL 2175141 (Ohio App. Sept. 6, 2005), the reduction was made by the district court. It is unclear whether it was on constitutional grounds or not.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/ Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/ Compensatory (or Potential Harm) Ratio After Review
<i>Texas Moto-Plex, Inc. v. Phelps</i> , No. 11-03-00336-CV, 2006 WL 246520 (Tex. App. Eastland Feb. 2, 2006) <sup>157</sup>	\$75,000	\$1,000	\$9,000	\$1,000	75.0	9.0
<i>Atkinson v. Orkin Exterminating Co., Inc.</i> , 604 S.E.2d 385 (S.C. App. 2004)	\$786,500	\$6,191	NA	\$6,191	127.0	NA
<i>SAS Assoc., Inc. v. Home Mktg. Serv., Inc.</i> , 168 S.W.3d 296 (Tex. App. Dallas 2005) <sup>158</sup>	\$200,000	\$7,574	\$22,722	\$7,574	26.4	3.0
<i>Reatta Res., Inc. v. Kraft</i> , No. 05-03-00229-CV, 2004 WL 423144 (Tex. App. Mar. 9, 2004)	\$200,000	\$6,000	\$200,000	\$6,000	33.3	33.3
<i>Srenke v. Hogner</i> , 704 N.W.2d 309 (Wis. App. 2005)	\$225,000	\$2,000	\$225,000	\$2,000	112.5	112.5
<i>Schwiigel v. Kohlmann</i> , 694 N.W.2d 467 (Wis. App. 2005)	\$375,000	\$12,000	\$375,000	\$12,000	31.2	31.2

157. In *Texas Moto-Plex, Inc. v. Phelps*, No. 11-03-00336-CV, 2006 WL 246520 (Tex. App. Feb. 2, 2006), the defendant did not challenge a \$75,000 punitive award to another plaintiff who received \$191,931 in compensatory damages.

158. In *SAS Associates, Inc. v. Home Marketing Servicing, Inc.*, 168 S.W.3d 296 (Tex. App. Dallas 2005), the trial court remitted the punitive award to \$22,722. The appellate court held that \$200,000 would have violated federal due process and thus upheld the remittitur. In so holding, it compared the \$200,000 punitive award to the total amount of compensatory damages for fraud and breach of contract combined (\$12,227) instead of the amount of compensatory damages for fraud alone (\$7,574), as had the trial court.

**APPENDIX B**  
**PUNITIVE AWARDS AND RATIOS WHERE COMPENSATORY AWARD/  
 POTENTIAL HARM BETWEEN \$25,000 AND \$99,999**

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Tapalian v. Tusino</i> , 377 F.3d 1 (1st Cir. 2004)	\$150,000	\$58,843	\$150,000	\$58,843	2.6	2.6
<i>Clements v. Fitzgerald's Miss., Inc.</i> , 2005 U.S. App. LEXIS 5595 (5th Cir. Apr. 5, 2005), <i>aff'g</i> 2004 U.S. Dist. LEXIS 28784 (N.D. Miss. May 6, 2004)	\$260,000	\$52,000	\$260,000	\$52,000	5.0	5.0
<i>Lust v. Sealy, Inc.</i> , 383 F.3d 580 (7th Cir. 2004) <sup>159</sup>	\$273,000	\$27,000	\$150,000 (reduced on non-constitutional grounds)	\$27,000	10.1	5.6
<i>Bains LLC v. ARCO Prods. Co.</i> , 405 F.3d 764 (9th Cir. 2005) <sup>160</sup>	\$5,000,000	\$50,000	\$300,000- \$450,000	\$50,000	100.0	6.0-9.0
<i>Praml v. Linsco/Private Ledger Corp.</i> , No. Civ. 05-581, 2005 WL 2290943 (D. Minn. Sept. 20, 2005) <sup>161</sup>	\$247,680	\$91,581	\$247,680	\$91,581	2.7	2.7
<i>United States v. Veal</i> , 365 F. Supp. 2d 1034 (W.D. Mo. 2004)	\$1,055,000	\$47,804	\$1,055,000	\$47,804	22.1	22.1

159. In *Lust v. Sealy, Inc.*, 383 F.3d 580 (7th Cir. 2004), the punitive damages verdict was reduced on non-constitutional grounds. The constitutional challenge was rejected.

160. In *Bains LLC v. ARCO Products Co.*, 405 F.3d 764 (9th Cir. 2005), the Ninth Circuit remanded to the lower court to choose an amount in between \$300,000 and \$450,000.

161. *Praml v. Linsco/Private Ledger Corp.*, No. Civ.05-581, 2005 WL 2290943 (D. Minn. Sept. 20, 2005), involved a challenged arbitration award.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Marmor v. Unico Serv. Co.</i> , No. Civ.A. 02-2230., 2003 WL 22462053 (E.D. Pa. Oct. 2, 2003)	\$140,000	\$70,000	\$140,000	\$70,000	2.0	2.0
<i>Morales v. Jones</i> , No. 00-CV-0618-DRH, 2006 WL 268770 (E.D. Wis. Feb. 1, 2006)	\$130,000	\$40,000	\$130,000	\$40,000	3.3	3.3
<i>Stamp v. Jackson</i> , 887 So. 2d 274 (Ala. Civ. App. 2003)	\$150,000	\$25,000	\$75,000	\$25,000	6.0	3.0
<i>Casciola v. F.S. Air Serv., Inc.</i> , 120 P. 3d 1059 (Alaska 2005)	\$300,000	\$30,000	\$300,000	\$30,000	10.0	10.0
<i>Hudson v. Cook</i> , 105 S.W.3d 821 (Ark. App. 2003)	\$250,000	\$35,000	\$250,000	\$35,000	7.1	7.1
<i>In re Moeller</i> , 2004 Cal. Ct. App. 2004 LEXIS 4767 (Cal. App. May 17, 2004) <sup>162</sup>	\$50,000	\$50,000	\$50,000	\$50,000	1.0	1.0
<i>Quay v. Heritage Financial, Inc.</i> , 617 S.E.2d 618 (Ga. Ct. App. 2005) <sup>163</sup>	\$650,000	\$40,133.93	\$250,000	\$40,133.93	16.2	6.2
<i>Park v. Mobil Oil Guam, Inc.</i> , 2004 Guam 20, No. CVA03-001, 2004 WL 2595897 (Nov. 16, 2004)	\$2,800,000	\$50,000	\$150,000	\$50,000	56.0	3.0

162. In *In re Moeller*, 2004 Cal. Ct. App. 2004 LEXIS 4767 (Cal. App. May 17, 2004), \$50,000 was awarded as a sanction under the applicable statute and not as punitive damages *per se*.

163. In *Quay v. Heritage Financial, Inc.*, 617 S.E.2d 618 (Ga. Ct. App. 2005), the reduction was on state law grounds. The court held that the reduced punitive award was consistent with due process.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Turner v. Firststar Bank, N.A.</i> , No. 5-04-0548, 2006 WL 539448 (Ill App. Mar. 6, 2006)	\$500,000	\$25,000	\$225,000	\$25,000	20.0	9.0
<i>Envul Energy Partners, Inc. v. Siemens Building Techs., Inc.</i> , Nos. 26521, 26702, 2005 WL 2741452 (Mo. App. Oct. 25, 2005) <sup>164</sup>	\$500,000	\$26,100	\$500,000	\$26,100	19.2	19.2
<i>Blust v. Lamar Adver. Co.</i> , 813 N.E.2d 902 (Ohio App. 2004)	\$2,245,000	\$32,000	NA <sup>165</sup>	\$32,000	70.2	NA
<i>Snead v. SPCA of Penn.</i> , 2006 Phila. Ct. Com. Pl. LEXIS 75 (Pa. Ct. Com. Pl. Feb. 1, 2006)	\$100,000	\$54,926.37	\$100,000	\$54926.37	1.8	1.8
<i>Chapa v. Tony Gullo Motors I, L.P.</i> , No. 09-03-568-CV, 2004 WL 1902533 (Tex. App. Aug. 26, 2004)	\$250,000	\$28,852	\$125,000	\$28,852	8.7	4.3

164. In *Environmental Energy Partners, Inc. v. Siemens Building Technologies, Inc.*, Nos. 26521, 26702, 2005 WL 2741452 (Mo. App. Oct. 25, 2005), the court added in the compensatory award of \$101,546.25 on plaintiff's breach of contract claim, and justified the ratio of punitive to compensatory damages as reasonable in light of the aggregate compensatory award (\$127,546.25).

165. NA = Court determined that punitive damages were unconstitutionally excessive, but did not make determination as to proper amount of such damages

APPENDIX C  
PUNITIVE AWARDS AND RATIOS WHERE COMPENSATORY AWARD/  
POTENTIAL HARM BETWEEN \$100,000 AND \$499,999

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Rodriguez-Marin v. Rivera-Gonzalez</i> , 438 F.3d 72 (1st Cir. 2006) <sup>166</sup>	\$315,000	\$285,000	\$315,000	\$285,000	1.1	1.1
<i>Patterson v. Balsamico</i> , No. 05-0888-CV, 2006 WL 459260 (2d Cir. Feb. 27, 2006) <sup>167</sup>	\$20,000	\$100,000	\$10,000 (reduced on ability to pay grounds)	\$100,000	0.2	0.1
<i>DiSorbo v. Hoy</i> , 343 F.3d 172 (2d Cir. 2003)	\$1,275,000	\$400,000	\$75,000	\$250,000	3.2	0.3
<i>Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co.</i> , 399 F.3d 224 (3d Cir. 2005), <i>affg</i> No. CIV.A. 00-5481, 2003 WL 21321370 (E.D. Pa. May 30, 2003) <sup>168</sup>	\$150,000	Approximately \$150,000	\$150,000	\$2,000 (\$137,000)	Approx. 1.0	75.0 (approx. 1.0)
<i>Stamathis v. Flying J., Inc.</i> , 389 F.3d 429 (4th Cir. 2004)	\$350,000	\$250,000	\$350,000	\$250,000	1.4	1.4

166. In *Rodriguez-Marin v. Rivera-Gonzalez*, 438 F.3d 72 (1st Cir. 2006), there were two defendants. The jury awarded \$120,000 against the first (whom was liable for \$180,000 in compensatory damages), and \$195,000 against the second (whom was liable for \$105,000 in compensatory damages). The court analyzed each punitive award against the amount of compensatory damages for which that defendant was liable.

167. In *Patterson v. Balsamico*, No. 05-0888-CV, 2006 WL 459260 (2d Cir. Feb. 27, 2006), the court held that the punitive award was not constitutionally excessive but reduced the award on wealth grounds.

168. In *Willow Inn, Inc. v. Public Service Mutual Insurance Co.*, 399 F.3d 224 (3d Cir. 2005), *affg* No. CIV.A. 00-5481, 2003 WL 21321370 (E.D. Pa. May 30, 2003), the lower court used potential harm when evaluating the punitive award for excessiveness, but the Third Circuit did not. Instead, the Third Circuit added attorneys fees and costs to the denominator for ratio purposes pursuant to 42 Pa. Cons. St. § 8371 (2003).

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Clark v. Chrysler Corp.</i> , 436 F.3d 594 (6th Cir. 2006) 169	\$3,000,000	\$471,258.26 (defendant's share was \$235,629.13)	\$471,258.26	\$471,258.26 (defendant's share was \$235,629.13)	6.7 (13.4)	1.0 (2.0)
<i>Farfara v. Citizens Bank &amp; Trust Co. of Chicago</i> , 433 F.3d 558 (7th Cir. 2006), <i>aff'g</i> No. 01 C 8720, 2005 WL 670523 (N.D. Ill. Mar. 21, 2005)	\$100,000	\$200,000	\$100,000	\$200,000	0.5	0.5
<i>Winkler v. Petersilie</i> , No. 03-6429, 2005 WL 450595 (6th Cir. Feb. 25, 2005) 170	\$200,000	\$132,525	\$200,000	\$33,525	1.5	6.0
<i>Kapelanski v. Johnson</i> , 390 F.3d 525 (7th Cir. Nov. 24, 2004)	\$332,500	\$100,000	\$332,500	\$100,000	3.3	3.3
<i>MacGregor v. Mallinckrodt, Inc.</i> , 373 F.3d 923 (8th Cir. 2004)	\$829,197	\$170,803	\$300,000	\$170,803	4.9	1.8

169. In *Clark v. Chrysler Corp.*, 436 F.3d 594 (6th Cir. 2006), the plaintiff was 50% responsible for the accident, so the defendant only had to pay 50% of the compensatory damages. Though a majority of the Sixth Circuit panel agreed that \$471,258.26 was the maximum constitutionally permissible award, the lead opinion did so on the ground that it was two times the defendant's share of the compensatory damages, while the concurrence did so on the ground that it was equal to the total amount of compensatory damages.

170. In *Winkler v. Petersilie*, No. 03-6429, 2005 WL 450595 (6th Cir. Feb. 25, 2005), the amount of punitive and compensatory damages awarded are aggregate figures, including awards against four separate defendants and to four sets of plaintiff-property owners.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/ Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/ Compensatory (or Potential Harm) Ratio After Review
<i>S. Union Co. v. S.W. Gas Corp.</i> , 415 F3d 1011 (9th Cir. 2005), as amended by 423 F.3d 1117 (9th Cir. 2005), rev'd 281 F. Supp. 2d 1090 (D. Ariz. 2003) 171	\$60 million	\$390,073	NA	\$390,073	153.8	NA
<i>Bosley v. Special Devices</i> , No. 03-16627, 2005 WL 1006775 (9th Cir. May 4, 2005)	\$150,000	\$175,000	\$150,000	\$175,000	0.9	0.9
<i>Konvitz v. Midland Wahayn Capital, Inc.</i> , Nos. 03-56505, 03-56626, 03-56627, 2005 WL 697053 (9th Cir. Mar. 28, 2005)	\$4,784,331	\$215,669	\$1,078,344	\$215,669	22.2	5.0
<i>Zhang v. Am. Gem Seafoods, Inc.</i> , 339 F.3d 1020 (9th Cir. 2003)	\$2,600,000	\$360,000	\$2,600,000	\$360,000	7.2	7.2
<i>Moreno v. City of Sacramento</i> , No. CIV-S-01-0725DFLDAD, 2005 WL 2016910 (E.D. Cal. Aug. 19, 2005)	\$350,000	\$367,000	\$350,000	\$367,000	1.0	1.0
<i>Arlio v. Lively</i> , 2005 U.S. Dist. LEXIS 22090 (D. Conn. Sept. 28, 2005)	\$100,000	\$150,000	\$100,000	\$150,000	0.7	0.7

171. In *S. Union Co. v. S.W. Gas Corp.*, 415 F3d 1011(9th Cir. 2005), as amended by 423 F.3d 1117 (9th Cir. 2005), rev'd 281 F. Supp. 2d 1090 (D. Ariz. 2003), the trial court had used potential harm for comparison in its analysis but the Ninth Circuit never addressed this aspect of the lower court decision.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Casumpang v. Int'l Longshore &amp; Warehouse Union, Local 142</i> , 411 F. Supp. 2d 1201 (D. Hawaii 2005)	\$1,000,000	\$240,000	\$240,000	\$240,000	4.2	1.0
<i>Shales v. Gen. Chauffeurs, Salesdrivers &amp; Helpers Local Union No. 330</i> , No. 00 C 575, 2003 WL 22038643 (N.D. Ill. Aug. 28, 2003)	\$250,000	\$171,500	\$250,000	\$171,500	1.5	1.5
<i>Young v. Daimler-Chrysler Corp.</i> , No. IP 01-0299-C-M/S, 2004 WL 2538639 (S.D. Ind. Oct. 25, 2004) <sup>172</sup>	\$4,500,000	\$100,000	\$300,000	\$100,000	45.0	3.0
<i>U.S. Equal Opportunity Emp. Comm'n v. E.I. Du Pont De Nemours &amp; Co.</i> , 406 F. Supp. 2d 465 (E.D. La. 2005) <sup>173</sup>	\$1,000,000	\$291,000	\$300,000 (reduced on non-constitutional grounds)	\$291,000	3.4	1.0

172. In *Young v. DaimlerChrysler Corp.*, No. IP 01-0299-C-M/S, 2004 WL 2538639 (S.D. Ind. Oct. 25, 2004), the plaintiff only received \$200,000 in punitive damages because of application of the Title VII statutory cap limiting total damages to \$300,000.

173. In *U.S. Equal Opportunity Employment Commission v. E.I. Du Pont De Nemours & Co.*, 406 F. Supp. 2d 645 (E.D. La. 2005), the reduction was made to comport with the ADA statutory cap. The court rejected the constitutional challenge.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/ Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/ Compensatory (or Potential Harm) Ratio After Review
<i>Hines v. Grand Casino of La.</i> , 358 F. Supp. 2d 533 (W.D. La. 2005) <sup>174</sup>	\$200,000	\$150,000	\$30,000	\$20,000	1.3	1.5
<i>Brent v. Redfern</i> , 2006 U.S. Dist. LEXIS 11697, at *12 (E.D. Mo. Mar. 21, 2006)	\$500,000	\$100,000	\$500,000	\$100,000	5.0	5.0
<i>Gibson v. Total Car Franchising Corp.</i> , 223 F.R.D. 265 (M.D.N.C. 2004)	\$550,000	\$176,124	\$550,000	\$176,124	3.1	3.1
<i>Denman v. Sanders</i> , No. 05 Civ. 0025, 2006 WL 452018 (S.D.N.Y. Feb. 24, 2006)	\$600,000	\$250,000	\$200,000	\$50,000	2.4	4.0
<i>Bach v. First National Union Bank</i> , No. 3:01-CV-191, 2006 WL 840381 (S.D. Ohio Mar. 30, 2006), on remand from No. 04-3899, 2005 WL 2009272 (6th Cir. Aug. 22, 2005)	\$2,628,600	\$400,000	\$2,228,600	\$400,000	6.6	5.6
<i>Jorling v. Habilitation Servs., Inc.</i> , No. Civ.A. 103CV00073, 2005 WL 1657060 (S.D. Ohio July 14, 2005)	\$950,000	\$475,000	\$950,000	\$475,000	2.0	2.0

174. Conversely, in *Hines v. Grand Casino of Louisiana*, 358 F. Supp. 2d 533 (W.D. La. 2005), the court applied the cap before determining the constitutional maximum. Thus, it first reduced the punitive award to \$170,000 and the compensatory award to \$130,000 because of the Title VII statutory cap. It then held that the \$170,000 punitive award was excessive in light of the reduced compensatory award of \$20,000.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>CGB Occupational Therapy, Inc. v. RHA Penn. Nursing Homes</i> , No. Civ.A.00-4918, 2005 WL 1595428 (E.D. Pa. July 5, 2005)	\$30 million	\$109,000	\$2,000,000 (reduced on non-constitutional grounds)	\$109,000	275.3	18.3
<i>Fresh v. Ent'mt U.S.A. of Tenn., Inc.</i> , 340 F. Supp. 2d 851 (W.D. Tenn. 2003)	\$2,161,540	\$179,403	\$717,610	\$179,403	12.0	4.0
<i>Smith v. Lowe's Home Centers, Inc.</i> , 2005 U.S. Dist. LEXIS 12812 (W.D. Tex. June 29, 2005)	\$4,000,000	\$300,000	\$400,000 (reduced on non-constitutional grounds)	\$300,000	13.3	1.3
<i>Flint Constr. Co. v. Hall</i> , 904 So. 2d 236 (Ala. 2004)	\$200,000	\$400,000	\$200,000	\$400,000	0.5	0.5
<i>Shiv-Ram, Inc. v. McCaleb</i> , 892 So. 2d 299 (Ala. 2003)	\$500,000	\$176,572.82	\$500,000	\$176,572.82	2.8	2.8

175. In *CGB Occupational Therapy, Inc. v. RHA Pennsylvania Nursing Homes*, No. Civ.A.00-4918, 2005 WL 1595428 (E.D. Pa. July 5, 2005), the reduction was on state law grounds. The district court then held that \$2,000,000 in punitive damages was not constitutionally excessive.

176. In *Smith v. Lowe's Home Centers, Inc.*, 2005 U.S. Dist. LEXIS 12812 (W.D. Tex. June 29, 2005), the award was reduced because of the state statutory cap. The reduced amount was ruled constitutionally permissible.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Superior Fed. Bank v. Jones &amp; Mackey Constr. Co., LLC</i> , No. CA 04-1389, 2005 WL 3307074 (Ark. App. Dec. 7, 2005) <sup>177</sup>	\$5,000,000	\$385,000	\$3,080,000	\$175,000	13.0	17.6
<i>Linza v. Diamond Center, Inc.</i> , Nos. A101407, A101408, 2005 WL 3560800 (Cal. App. Dec. 30, 2005) <sup>178</sup>	\$1,900,000	\$941,297	\$1,000,000	\$258,631	2.0	3.9
<i>Helmer v. Bingham Toyota Isuzu</i> , 29 Cal. Rptr. 3d 136 (Cal. App. 2005) <sup>179</sup>	\$1,500,000	\$450,913	\$675,000	\$450,913	3.3	1.5
<i>Vartanian v. Gale &amp; Turnbull, Inc.</i> , No. B171215, 2004 WL 2453902 (Cal. App. Nov. 3, 2004)	\$300,000	\$147,466	\$300,000	\$147,466	2.0	2.0
<i>Jarrett v. Bach</i> , No. C038336, 2004 WL 2341476 (Cal. App. Oct. 19, 2004)	\$94,000	\$275,000	\$94,000	\$275,000	0.3	0.3

177. In *Superior Fed. Bank v. Jones & Mackey Construction Co., LLC*, No. CA 04-1389, 2005 WL 3307074 (Ark. App. Dec. 7, 2005), it was the trial court that reduced the punitive award from \$5 million to \$3.08 million (in proceedings subsequent to one in which it reduced the compensatory damages from \$385,000 to \$175,000).

178. In *Linza v. Diamond Center, Inc.*, Nos. A101407, A101408, 2005 WL 3560800 (Cal. App. Dec. 30, 2005), there were two defendants. On post-trial motions, the trial court eliminated the punitive award against one defendant, amended the verdict so that only that defendant was liable for compensatory damages for the breach of covenant of good faith and fair dealing, and reduced the amount of fraud damages.

179. In *Helmer v. Bingham Toyota Isuzu*, 29 Cal. Rptr. 3d 136 (Cal. App. 2005), the reduction was made by the trial court.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Clear Channel Outdoor, Inc. v. Adver. Display Sys.</i> , Nos. A102492, A102716, 2004 WL 2181793 (Cal. App. Sept. 29, 2004)	\$600,000	\$365,434	\$178,121	\$108,610	1.6	1.6
<i>Alberts v. Franklin</i> , No. D040310, 2004 WL 1345078 (Cal. App. June 16, 2004)	\$586,000	\$241,596	\$586,000	\$241,596	2.4	2.4
<i>Bardis v. Oates</i> , 14 Cal. Rptr. 3d 89 (Cal. App. 2004)	\$7,000,000	\$165,528	\$1,500,000	\$165,528	42.3	9.1
<i>Textron Fin. Corp. v. Nat'l Union Fire Ins. Co. of Pitt.</i> , 13 Cal. Rptr. 3d 586 (Cal. App. 2004)	\$10 million	\$165,414	\$360,000	\$89,744	60.5	4.0
<i>Laursen v. Pope</i> , No. B159647, 2003 WL 22766141 (Cal. App. Nov. 23, 2003)	\$750,000	\$396,000	\$295,000 (reduced on non-constitutional grounds)	\$396,000	1.9	0.7
<i>Brandstetter v. Holiday Retreats, Inc.</i> , No. E032364, 2003 WL 22391270 (Cal. App. Oct. 21, 2003)	\$325,000	\$125,000	\$325,000	\$125,000	2.6	2.6
<i>Diamond Woodworks, Inc. v. Argonaut Ins. Co.</i> , 135 Cal. Rptr. 2d 736 (Cal. App. 2003)	\$14 million	\$424,100	\$1,000,000	\$258,570	33.0	3.9

180. In *Laursen v. Pope*, No. B159647, 2003 WL 22766141 (Cal. App. Nov. 23, 2003), the reduction was on non-constitutional grounds. The constitutional challenge was rejected.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Taylor Woodrow Homes, Inc. v. Acceptance Ins. Co.</i> , No. G029532, 2003 WL 21224088 (Cal. App. May 28, 2003)	\$5,000,000	\$293,000	\$1,000,000	\$293,000	17.1	3.4
<i>Jones v. Delaware Cmty. for Individual Dignity</i> , No. Civ.A. 00C-06-075CLS, 2004 WL 2827924 (Del. Super. Apr. 29, 2004)	\$1,440,000	\$150,000	\$1,440,000	\$150,000	9.6	9.6
<i>Daka, Inc. v. McCrae</i> , 839 A.2d 682 (D.C. App. 2003)	\$4,812,500	\$187,500	NA	\$187,500	25.7	NA
<i>Bishop Eddie Long Ministries, Inc. v. Dillard</i> , 613 S.E.2d 673 (Ga. App. 2005) <sup>181</sup>	\$400,000	\$135,000	\$400,000	\$135,000	3.0	3.0
<i>Phelps v. Louisville Water Co.</i> , 103 S.W.3d 46 (Ky. 2003)	\$2,000,000	\$176,361.64	\$2,000,000	\$176,361.64	11.3	11.3
<i>Borne v. Haverhill Golf &amp; Country Club, Inc.</i> , 791 N.E.2d 903 (Mass. App. 2003)	\$1,430,000	\$424,000	\$1,430,000	\$424,000	3.4	3.4

181. In *Bishop Eddie Long Ministries, Inc. v. Dillard*, 613 S.E.2d 673 (Ga. Ct. App. 2005), the defendant did not claim that the punitive award violated due process. The court nevertheless noted that the ratio of 3:1 was well within the accepted constitutional range.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Marie Deonier &amp; Assocs. v. Paul Revere Life Ins. Co.</i> , 101 P.3d 742 (Mont. 2004) 182	\$1,000,000	\$150,000	\$1,000,000	\$150,000	6.7	6.7
<i>Atler v. Murphy Enters., Inc.</i> , 104 P.3d 1092 (N.M. App. 2004) 183	\$998,725	\$263,663	\$998,725	\$263,663	3.8	3.8
<i>Santos v. STS Enters., Inc.</i> , 2005 N. Mar. I. LEXIS 3 (N. Mar. I. Mar. 8, 2005) 184	\$225,000	\$125,000	\$225,000	\$125,000	1.8	1.8
<i>Waddell v. Roxane Labs., No. 03AP-558</i> , 2004 WL 1103710 (Ohio App. May 6, 2004)	\$250,000	\$135,000	\$250,000	\$135,000	1.9	1.9
<i>Waddill v. Anchor Hocking, Inc.</i> , 78 P.3d 570 (Or. App. 2003)	\$1,000,000	\$100,854	\$403,416	\$100,854	9.9	4.0
<i>Frazier v. Badger</i> , 603 S.E.2d 587 (S.C. 2004)	\$400,000	\$400,000	\$200,000	\$200,000	1.0	1.0
<i>Hollock v. Erie Ins. Exch.</i> , 842 A.2d 409 (Pa. Super. 2004)	\$2,800,000	\$278,825	\$2,800,000	\$278,825	10.0	10.0

182. In *Marie Deonier & Assocs. v. Paul Revere Life Ins. Co.*, 101 P.3d 742 (Mont. 2004), the trial court had remitted the punitive award to \$375,000 representing a ratio of punitive-to-compensatory damages of 2.5:1. The Montana Supreme Court reinstated the jury's punitive award of \$1,000,000.

183. In *Atler v. Murphy Enterprises, Inc.*, 104 P.3d 1092 (N.M. App. 2004), the total compensatory award was \$399,490. The defendants were liable for 66% of this amount, which is approximately \$263,663. The court used \$263,663 for ratio purposes.

184. In *Santos v. STS Enterprises, Inc.*, 2005 N. Mar. I. LEXIS 3 (N. Mar. I. Mar. 8, 2005), there were two punitive awards: one for \$25,000 versus an individual defendant and another for \$200,000 against a corporation. Both were jointly liable for the \$125,000 compensatory award.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Reading Radio, Inc. v. Fink</i> , 833 A.2d 199 (Pa. Super. 2003)	\$805,000	\$300,000	\$805,000	\$300,000	2.7	2.7
<i>Collins Entm't Corp. v. Coats &amp; Coats Rental Amusement</i> , 584 S.E.2d 120 (S.C. App. 2003)	\$1,569,013	\$157,450	\$1,569,013	\$157,450	9.9	9.9
<i>USA Truck, Inc. v. West</i> , No. 06-04-00086-CV, 2006 WL 870693 (Tex. App. Texarcana Apr. 6, 2006)	\$750,000	\$500,000	\$750,000	\$500,000	1.5	1.5
<i>Chu v. Hong</i> , 185 S.W.3d 507 (Tex. App. Fort Worth 2005)	\$1,500,000	\$330,000	\$1,500,000	\$330,000	4.5	4.5
<i>Bunton v. Bentley</i> , 176 S.W.3d 21 (Tex. App. Tyler 2005)	\$1,000,000	\$7,150,000	\$1,000,000	\$300,000	0.1	3.3
<i>Hazlewood Patterson Co. v. Hancock</i> , No. 10-03-00274-CV, 2004 WL 2903861 (Tex. App. Waco Dec. 15, 2004) <sup>185</sup>	\$385,592	\$192,796	\$385,592	\$83,470	2.0	4.6
<i>Cass v. Stephens</i> , 156 S.W.3d 38 (Tex. App. El Paso 2004) <sup>186</sup>	\$25 million	\$200,082	\$600,000	\$200,082	124.9	3.0

185. In *Hazlewood Patterson Co. v. Hancock*, No. 10-03-00274-CV, 2004 WL 2903861 (Tex. App. Waco Dec. 15, 2004), \$192,796 in punitive damages was awarded separately against two defendants.

186. In *Cass v. Stephens*, 156 S.W.3d 38 (Tex. App. El Paso 2004), there were two separate awards for each type of claim warranting punitive damages.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Harris v. Archer</i> , 134 S.W.3d 411 (Tex. App. Amarillo 2004)	\$1,500,000	\$203,895	\$815,580	\$203,895	7.4	4.0
<i>Haggan Clothing Co. v. Hernandez</i> , 164 S.W.3d 407 (Tex. App. Corpus Christi 2003), vacated on other grounds by 164 S.W.3d 386 (Tex. 2005)	\$1,400,000	\$210,000	\$1,400,000	\$210,000	6.7	6.7
<i>Boyd v. Goffoli</i> , 608 S.E.2d 169 (W. Va. 2004)	\$1,000,000	\$300,000	\$1,000,000	\$300,000	3.3	3.3
<i>Betterman v. Fleming Cos.</i> , 677 N.W.2d 673 (Wis. App. 2004)	\$300,000	\$255,666	\$300,000	\$255,666	1.2	1.2
<i>Trinity Evangelical Lutheran Church &amp; Sch.—Friestadt v. Tower Ins. Co.</i> , 661 N.W.2d 789 (Wis. 2003)	\$3,500,000	\$490,000	\$3,500,000	\$490,000	7.1	7.1

187. The punitive award in *Trinity Evangelical Lutheran Church & School—Friestadt v. Tower Insurance Co.*, 661 N.W.2d 789 (Wis. 2003), was evaluated for excessiveness using potential harm as a comparison.

**APPENDIX D**  
**PUNITIVE AWARDS AND RATIOS WHERE COMPENSATORY AWARD/  
 POTENTIAL HARM WAS \$500,000 OR GREATER**

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>2660 Woodley Road Joint Venture v ITT Sheraton Corp.</i> , 369 F.3d 732 (3d Cir. 2004) <sup>188</sup>	\$37.5 million	\$11,832,000	\$2,025,000	\$1,322,000	3.2	1.5
<i>Rain Bird Corp. v. Nat'l Pump Co., LLC</i> , No. 04-60735, 2005 WL 1395204 (5th Cir. June 14, 2005)	\$500,000	\$2,869,167	\$500,000	\$2,869,167	0.2	0.2
<i>In re John Richards Homes Bldg. Co.</i> , 439 F.3d 248 (6th Cir. 2006)	\$2,000,000	\$4,100,000	\$2,000,000	\$4,100,000	0.5	0.5
<i>Pollard v. E.I. DuPont DeNemours, Inc.</i> , 2005 U.S. App. LEXIS 11949 (6th Cir. June 22, 2005)	\$2,500,000	\$2,200,000	\$2,500,000	\$2,200,000	1.1	1.1
<i>Estate of Moreland v. Dieter</i> , 395 F.3d 747 (7th Cir. 2005)	\$27.5 million	\$29,000,000	\$27,500,000	\$29,000,000	0.9	0.9

<sup>188</sup> *2660 Woodley Road Joint Venture v ITT Sheraton Corp.*, 369 F.3d 732 (3d Cir. 2004), does not appear to involve a constitutional excessiveness challenge, but the court cited to *State Farm* in support of its ratio. (The district court on review reduced the ratio to 1.5 to 1; whereas the Third Circuit reduced the amount of compensatory damages used in the calculation).

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Diesel Machinery, Inc. v. B.R. Lee Indus., Inc.</i> , 418 F.3d 820 (8th Cir. 2005), <i>affg</i> 328 F. Supp. 2d 1029 (D.S.D. 2003) 189	\$4,335,000	\$665,000	\$2,660,000 (reduced on non-constitutional grounds)	\$665,000	6.5	4
<i>Boerner v. Brown &amp; Williamson Tobacco Co.</i> , 394 F.3d 594 (8th Cir. 2005)	\$15 million	\$4,025,000	\$5,000,000	\$4,025,000	3.7	1.2
<i>Conseco Finance Servicing Corp. v. N. Am. Mortgage Co.</i> , 381 F.3d 811 (8th Cir. 2004)	\$18 million	\$3,500,000	\$7,000,000	\$3,500,000	5.14	2.0
<i>Williams v. ConAgra Poultry Co.</i> , 378 F.3d 790 (8th Cir. 2004) 190	\$12127500	\$1,929,186	\$1,100,000	\$773,156	6.3	1.4
<i>Stogsdill v. Healthmark Partners, L.L.C.</i> , 377 F.3d 827 (8th Cir. 2004)	\$5,000,000	\$500,000	\$2,000,000	\$500,000	10.0	4.0

189. In *Diesel Machinery, Inc. v. B.R. Lee Industries, Inc.*, 418 F.3d 820 (8th Cir. 2005), *affg* 328 F. Supp. 2d 1029 (D.S.D. 2003), the punitive award was remitted to \$2,660,000 on non-constitutional grounds. The constitutional challenge was rejected. The Eighth Circuit held that the reduced award was constitutional.

190. In *Williams v. ConAgra Poultry Co.*, 378 F.3d 790 (8th Cir. 2004), the plaintiff had two claims on which punitive damages were warranted. On the plaintiff's wrongful discharge claim, the jury awarded \$927,788.90 in compensatory damages and \$6,063,750 in punitive damages. The district court reduced these amounts to \$173,156 and \$500,000 respectively. This punitive award was not challenged on appeal. On the plaintiff's harassment claim, the jury awarded \$1,001,397.40 in compensatory damages and \$6,063,750 in punitive damages. The district court reduced the compensatory award to \$600,000 but left the punitive award intact. This latter punitive damages award was the subject of the appeal.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Planned Parenthood v. Am. Coalition of Life Activists</i> , 422 F.3d 949 (9th Cir.2005), <i>rev'd</i> , 300 F. Supp. 2d 1055 (D. Or. 2004)	\$108.5 million	\$526,336,14	\$4737025.26	\$526,336.14	206.1	9:1
<i>Ceimo v. General Am. Life Ins. Co.</i> , Nos. 03-16882, 03-16930, 2005 WL 1523445 (9th Cir. June 29, 2005)	\$79 million	\$6,692,610	\$7,000,000	\$6,692,610	11.8	1.0
<i>Eden Elec., Ltd. v. Amana Co., L.P.</i> , 370 F.3d 824 (8th Cir. 2004), <i>aff'd</i> 258 F. Supp. 2d 958 (N.D. Iowa 2003)	\$17875000	\$2,100,000	\$10 million	\$2,100,000	8.5	4.8
<i>Asa-Brandt, Inc. v. ADM Investor Servs., Inc.</i> , 344 F.3d 738 (8th Cir. 2003) <sup>191</sup>	\$1,250,000	more than \$3.9 million	\$1,250,000	more than \$3.9 million	at most 0.3	at most 0.3
<i>Hangarter v. Provident Life &amp; Accident Ins. Co.</i> , 373 F.3d 998 (9th Cir. 2004)	\$5,000,000	\$1,960,849	\$5,000,000	\$1,960,849	2.6	2.6
<i>Greenberg v. Paul Revere Life Ins. Co.</i> , No. 02-16501, 2004 WL 74630 (9th Cir. Jan. 12, 2004)	\$2,400,000	\$547,445.42	\$2,400,000	\$547,445.42	4.4	4.4
<i>Bogle v. McClure</i> , 332 F.3d 1347 (11th Cir. 2003)	\$14 million	\$7,000,000	\$13,300,000	\$3,500,000	2.0	3.8

191. The punitive award in *Asa-Brandt, Inc. v. ADM Investor Services, Inc.*, 344 F.3d 738 (8th Cir. 2003), was evaluated for excessiveness using potential harm as a comparison.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.</i> , 345 F.3d 1366 (Fed. Cir. 2003)	\$50 million	\$15,000,000	\$50,000,000	\$15,000,000	3.3	3.3
<i>Action Marine, Inc. v. Continental Carbon, Inc.</i> , No. 3:01-CV-994, 2006 WL 173653 (M.D. Ala. Jan. 23, 2006)	\$17.5 million	\$1,915,000	\$17,500,000	\$1,915,000	9.1	9.1
<i>McClain v. Metabolife Int'l, Inc.</i> , 259 F. Supp. 2d 1225 (N.D. Ala. 2003), <i>rev'd on other grounds</i> , No. 03-12776, 2005 WL 477861 (11th Cir. Mar. 2, 2005)	\$3,100,000	\$711,000	\$2,550,000	\$711,000	4.4	3.6
<i>In re Exxon Valdez</i> , 296 F. Supp. 2d 1071 (D. Alaska 2004)	\$5 billion	\$513,100,000	\$4.5 billion	\$513,100,000	9.7	8.8
<i>United States v. Bailey</i> , 288 F. Supp. 2d 1261 (M.D. Fla. 2003), <i>aff'd on other grounds</i> 419 F.3d 1208 (11th Cir. 2005).	\$3,000,000	\$2,000,000	NA <sup>192</sup>	\$2,000,000	1.5	NA

192. NA = Court determined that reconsideration of proper amount of punitive damages was warranted.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Decorations For Generations Inc. v. Home Depot USA, Inc.</i> , 2003 U.S. Dist. LEXIS 26608 (E.D. Cal. Sept. 22, 2003), <i>vacated on other grounds</i> by 2005 U.S. App. LEXIS 3789 (Fed. Cir. Mar. 8, 2005) <sup>193</sup>	\$10850000	\$2,154,000	\$3,041,983	\$730,661	5.0	4.2
<i>Interclaim Holdings Ltd. v. Ness, Motley, Loadholt, Richardson &amp; Poole</i> , 298 F. Supp. 2d 746 (N.D. Ill. 2004)	\$27.7 million	\$8,300,000	\$27,700,000	\$8,300,000	3.3	3.3
<i>Synergistics, Inc. v. Hurst</i> , No. 4:04CV318, 2005 WL 3358298 (E.D. Mo. Dec. 9, 2005)	\$586,388	\$1,759,165	\$586,388	\$1,759,165	0.3	0.3
<i>White v. Ford Motor Co.</i> , Slip. Op. No. CV-N-95-279-DWH (VPC) (D. Nev. Sept. 1, 2004), <i>as amended</i> Mar. 15, 2005.	\$52 million	\$2,305,435	\$52 million	\$2,305,435	22.6	22.6

193. In *Decorations For Generations Inc. v. Home Depot USA, Inc.*, 2003 U.S. Dist. LEXIS 26608 (E.D. Cal. Sept. 22, 2003), *vacated on other grounds* by 2005 U.S. App. LEXIS 3789 (Fed. Cir. Mar. 8, 2005), the court reduced the punitive award against Home Depot from \$10,000,000 to \$2,191,983, three times the reduced compensatory award of \$730,661. It left \$850,000 in punitive damages awards against other defendants intact.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Sanchez v. Brokop</i> , No. CIV. 04-134 LCS/RLP, 2005 WL 2757288 (D.N.M. Oct. 14, 2005)	\$2 million	\$1,200,000	\$2,000,000	\$1,200,000	1.7	1.7
<i>Motorola Credit Corp. v. Uzan</i> , No. 02 Civ. 0666, 2006 WL 290210 (S.D.N.Y. Feb. 6, 2006), on remand from 388 F.3d 39 (2d Cir. 2004)	\$2,132,896,906	\$2,132,896,906	\$1 billion	\$2132896906	1.0	0.5
<i>Watson v. E.S. Sutton, Inc.</i> , No. 02 Civ. 2739, 2005 WL 2170659 (S.D.N.Y. Sept. 6, 2005) <sup>194</sup>	\$2,500,000	\$1,934,000	\$717,000	\$1,554,000	1.3	0.5
<i>TVT Records v. Island Def Jam Music Group</i> , 279 F. Supp. 2d 413 (S.D.N.Y. 2003), vacated on other grounds by 412 F.3d 82 (2d Cir. 2005)	\$108.03 million	\$23,780,000 (joint and several liability)	\$29,125,000	\$23,780,000 (joint and several liability)	4.5	1.2
<i>Chicago Title Ins. Corp. v. Magnuson</i> , No. 2:03-CV-368, 2005 WL 2373430 (S.D. Ohio Sept. 26, 2005)	\$32.4 million	\$10,800,000	\$32,400,000	\$10,800,000	3.0	3.0

194. In *Watson v. E.S. Sutton, Inc.*, No. 02 Civ. 2739, 2005 WL 2170659 (S.D.N.Y. Sept. 6, 2005), the court stated that the punitive award was reduced to an amount less than the constitutional maximum.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Jurinko v. The Medical Protective Co.</i> , No. 03-CV-4053, 2006 WL 785234 (E.D. Pa. Mar. 29, 2006)	\$62.5 million	\$1,658,345	\$6,250,000	\$1,658,345	3.8	3.8
<i>Gallatin Fuels, Inc. v. Westchester Fire Ins. Co.</i> , 2006 U.S. Dist. LEXIS 13577 (W.D. Pa. Mar. 28, 2006)	\$20 million	\$1,325,000	\$4,500,000	\$1,325,000	15.1	3.4
<i>Hussein v. Universal Dev. Mgmt., Inc.</i> , 2006 U.S. Dist. LEXIS 49 (W.D. Pa. Jan. 3, 2006)	\$1,600,000	\$850,000	\$1,600,000	\$850,000	1.9	1.9
<i>Day v. Ingle's Markets, Inc.</i> , No. 2:01-CV-325, 2006 WL 239290 (E.D. Tenn. Jan. 25, 2006)	\$2,500,000	\$500,000	\$2,500,000	\$500,000	5.0	5.0
<i>Gaskins v. BFI Waste Servs., LLC</i> , No. Civ.A. 02-1832, 2005 WL 1667737 (E.D. Va. June 17, 2005) <sup>195</sup>	\$4,000,000	\$1,200,000	\$1,200,000	\$600,000	3.3	2.0
<i>The Birmingham News Co. v. Horn</i> , 901 So. 2d 27 (Ala. 2004)	\$13913050	\$5,565,220	\$9,086,618	\$3,634,647	2.5	2.5
<i>Union Pac. R.R. Co. v. Barber</i> , 149 S.W.3d 325 (Ark. 2004)	\$25 million	\$5,100,000	\$25,000,000	\$5,100,000	4.9	4.9

195. In *Gaskins v. BFI Waste Services, LLC*, No. Civ.A. 02-1832, 2005 WL 1667737 (E.D. Va. June 17, 2005), there were two plaintiffs with each receiving the same amount of punitive and compensatory damages.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Advocat, Inc. v. Sauer</i> , 111 S.W.3d 346 (Ark. 2003)	\$63 million	\$15,000,000	\$21,000,000	\$5,000,000	4.2	4.2
<i>Gober v. Ralphs Grocery Co.</i> , 40 Cal.Rptr.3d 92 (Cal. App. 2006) <sup>196</sup>	\$30 million	\$550,000	\$1,500,000	\$2,500,000	54.5	6.0
<i>La Jolla Cove Motel &amp; Hotel Apartments Inc. v. Jackman</i> , No. D045000, 2006 WL 401268 (Cal. App. Feb. 21, 2006)	\$526,093	\$526,093	\$526,093	\$526,093	1.0	1.0
<i>Boeken v. Philip Morris Inc.</i> , 26 Cal. Rptr. 3d 638 (Cal. App. 2005)	\$3 billion	\$5,539,127	\$50,000,000	\$5,539,127	541.6	9.0
<i>Czarnik v. Illumina, Inc.</i> , No. D041034, 2004 WL 2757571 (Cal. App. Dec. 3, 2003)	\$5,000,000	\$2,196,935	\$2,196,935	\$2,196,935	2.3	1.0
<i>Streetscenes L.L.C. v. ITC Ent'mt Group, Inc.</i> , No. B168835, 2004 WL 2668695 (Cal. App. Nov. 23, 2004) <sup>197</sup>	\$8,000,000	\$9,000,000	NA	\$1,185,000	0.9	NA

196. In *Gober v. Ralphs Grocery Co.*, 40 Cal.Rptr.3d 92 (Cal. App. 2006), there were six plaintiffs. The trial court partially remitted the punitive award. Two plaintiffs accepted this reduced amount, which the defendant paid.

197. In *Streetscenes L.L.C. v. ITC Entertainment Group, Inc.*, No. B168835, 2004 WL 2668695 (Cal. App. Nov. 23, 2004), the court remanded for a new trial on punitive damages after concluding that the \$8,000,000 punitive award was excessive in light of the reduced compensatory award.

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Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>City of Hope Nat'l Med. Cent. v. Genentech, Inc.</i> , 20 Cal. Rptr. 3d 234 (Cal. App. 2004)	\$200 million	\$300,164,030	\$200 million	\$300,164,030	0.7	0.7
<i>Bettelman Recreation Enter. v. City of S. El Monte</i> , No. B155511, 2004 WL 1545404 (Cal. App. July 12, 2004), modified No. B155511, 2004 WL 1790050 (Aug. 1, 2004)	\$875,000	\$600,530	\$875,000	\$600,530	1.5	1.5
<i>Rogers v. Franck</i> , No. A100655, 2004 WL 728875 (Cal. App. Apr. 5, 2004)	\$400,000	\$500,000	NA	\$500,000	0.8	NA
<i>Maya B. v. Vogel</i> , No. B150299, 2004 WL 551325 (Cal. App. March 22, 2004)	\$1,600,000	\$790,000	\$1,600,000	\$790,000	2.0	2.0
<i>Henley v. Philip Morris Inc.</i> , 9 Cal. Rptr. 3d 29 (Cal. App. 2004), review granted, 88 P.3d 497 (Cal. 2004).	\$50 million	\$1,500,000	\$9,000,000	\$1,500,000	33.3	6.0
<i>Romo v. Ford Motor Co.</i> , 6 Cal. Rptr. 3d 793 (Cal. App. 2003)	\$290 million	\$4,574,429	\$23,723,287	\$4,574,429	63.4	5.2

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Aldworth v. England</i> , Nos. A05A1546, A05A1547, 2005 WL 2374735 (Ga. Ct. App. Sept. 28, 2005) <sup>198</sup>	\$2,000,000	\$750,000	\$2,000,000	\$750,000	2.7	2.7
<i>Kentucky Kingdom Amusement Co. v. Belo Kentucky, Inc.</i> , No. 2002-SC-0693-DG, 2005 WL 2043633 (Ky. Aug. 25, 2005) <sup>199</sup>	\$2,500,000	\$1,475,000	\$2,500,000	\$475,000	1.7	5.3
<i>Steel Techs., Inc. v. Estate of Congleton</i> , No. 2003-CA-002090-MR, 2005 WL 1490330 (Ky. App. June 24, 2005)	\$1,000,000	\$667,267	\$1,000,000	\$667,267	1.5	1.5
<i>Sufix, U.S.A., Inc. v. Cook</i> , 128 S.W.3d 838 (Ky. App. 2004)	\$3,000,000	\$2,800,000	\$3,000,000	\$2,800,000	1.1	1.1
<i>Grefer v. Alpha Technical</i> , 901 So. 2d 1117 (La. App. 2005).	\$1 billion	\$56,145,000	\$112.29 million	\$56,145,000	17.9	2.0

198. In *Aldworth v. England*, Nos. A05A1546, A05A1547, 2005 WL 2374735 (Ga. Ct. App. Sept. 28, 2005), there were two defendants who were jointly and severally liable for the \$750,000 compensatory award. The court upheld punitive awards of \$1 million against each defendant, deeming the ratio of punitive to compensatory damages to be “1.3:1.”

199. In *Kentucky Kingdom Amusement Co. v. Belo Kentucky, Inc.*, No. 2002-SC-0693-DG, 2005 WL 2043633 (Ky. Aug. 25, 2005), the trial judge reduced the compensatory award.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Martinez v. Polson Ready Mix Concrete, Inc.</i> , No. DV-99-88271 (Mont. Dist. Ct. May 9, 2005)	\$5,200,000	\$3,045,572	\$5,200,000	\$3,045,572	1.6	1.6
<i>Gallegos v. Elite Model Mgmt. Corp.</i> , No. 2003-CA-002090-MR, 2004 WL 51604 (N.Y. Sup. Ct. Jan. 6, 2004)	\$2,600,000	\$1,100,000	\$2,600,000	\$1,100,000	2.4	2.4
<i>Williams v. Philip Morris Inc.</i> , 127 P.3d 1165 (Or. 2006), <i>aff'g</i> 92 P.3d 126 (Or. App. 2004)	\$79.5 million	\$821,486	\$79,500,000	\$521,486	96.8	152.4
<i>Goddard v. Farmers Ins. Co. of Oregon</i> , 120 P.3d 1260 (Or. App. 2005)	\$20718576	\$863,274	\$3,840,000	\$1,280,000	24.0	3.0
<i>Bocci v. Key Pharms., Inc.</i> , 76 P.3d 669 (Or. App.), modified on recons., 78 P.3d 908 (Or. App. 2003)	\$22.5 million	\$500,000	\$3,500,000	\$500,000	45.0	7.0
<i>Austin v. Specialty Transp. Servs.</i> , 594 S.E.2d 867 (S.C. App. 2004)	\$2,600,000	\$1,025,000	\$2,600,000	\$1,025,000	2.5	2.5

200. In *Martinez v. Polson Ready Mix Concrete, Inc.*, No. DV-99-88271 (Mont. Dist. Ct. May 9, 2005), the numbers are aggregated for the two plaintiffs and two defendants.

Case	Punitive Verdict	Compensatory Verdict or Potential Harm	Post-Review Punitive Damages	Post-Review Compensatory Damages or Potential Harm	Punitive/Compensatory (or Potential Harm) Ratio of Jury Verdict	Punitive/Compensatory (or Potential Harm) Ratio After Review
<i>Flax v. Daimler-Chrysler Corp.</i> , No. Civ.A. 02C-1288, 2005 WL 1768725 (Tenn. Cir. Ct. June 20, 2005)	\$98 million	\$7,500,000	\$20,000,000	\$7,500,000	13.1	2.7
<i>Bright v. Addison</i> , 171 S.W.3d 588 (Tex. App. Dallas 2005) 201	\$5,000,000	\$3,656,395	\$5,000,000	\$3,656,395	1.4	1.4
<i>Springs Window Fashions Division, Inc. v. The Blind Maker, Inc.</i> , 184 S.W.3d 840 (Tex. App. Austin 2006)	\$2,090,000	\$5,167,240	\$2,090,000	\$1,270,952	0.4	1.6
<i>Mission Res., Inc. v. Garza Energy Trust</i> , 166 S.W.3d (Tex. App. Corpus Christi 2005)	\$10 million	\$543,776	\$10,000,000	\$543,776	18.4	18.4
<i>Citizens Nat'l Bank v. Allen Rae Inv., Inc.</i> , 142 S.W.3d 459 (Tex. App. Fort Worth 2004)	\$65,000	\$675,890	\$65,000	\$25,890	0.1	2.5
<i>Campbell v. State Farm Mut. Auto. Ins. Co.</i> , 98 P.3d 409 (Utah 2004)	\$145 million	\$2,600,000	\$9018780.75	\$1,002,086.75	55.8	9.0
<i>Staskal v. Symons Corp.</i> , No. 2004AP663, 2005 WL 2095757 (Wis. App. Sept. 1, 2005)	\$15 million	\$9,321,610.13	\$15,000,000	\$9,321,610.13	1.6	1.6

201. In *Bright v. Addison*, 171 S.W.3d 588 (Tex. App. Dallas 2005), the jury awarded \$1,500,000 against each of three defendants and \$500,000 against a fourth.