



CIVIL JUSTICE
RESOURCE GROUP

Checks and Balances on Punitive Damages

- Punitive damages are reserved for the most egregious conduct. Juries award punitive damages to punish and deter reckless or outrageous conduct that threatens the public safety or interest.ⁱ
- Punitive damages are rarely awarded and are tightly controlled by judges.ⁱⁱ
- Most states require victims to prove a company or individual was malicious or reckless, or intentionally harmed the victim, in order for punitive damages to be awarded.ⁱⁱⁱ Negligence is never enough.^{iv}
- To avoid excessive use of this remedy, there are many built-in controls at each stage of litigation.^v
- Forty states have enacted restrictions on punitive damages; five states do not recognize them at all.^{vi} Nineteen states cap or limit the amount of punitive damages that may be recovered.^{vii} Connecticut limits punitive damages to litigation expenses while Michigan's remedy is for mental suffering.^{viii}
- In addition, the U.S. Supreme Court suggested that punitive damages should almost never be more than 10 times the amount of compensatory damages.^{ix}
- The U.S. Supreme Court has ruled that every individual or company hit with punitive damages is entitled to a review of the amount of punitive damages for excessiveness.^x
- In the rare case where punitive damages are awarded, they are reduced by the judge, reversed, or settled for less than the full amount awarded in approximately fifty percent of the cases.^{xi}
- Eight states require the plaintiff to share a portion of punitive damages with the state or a charity.^{xii}
- The danger of further tort reform is that this remedy will no longer be flexible enough to protect society in the twenty-first century.^{xiii}

Endnotes

ⁱ Despite the diversity in research methods and samples, research studies of the law-in-action agree that there is no punitive damages crisis. See Michael L. Rustad, *Unraveling Punitive Damages: Current Data and Further Inquiry*, 14 WISC. L. REV. 14 (1998) (summarizing the results of nine empirical studies); see also, e.g., Theodore Eisenberg, *Damage Awards in Perspective: Behind The Headline-Grabbing Awards in Exxon Valdez and Engle*, 36 WAKE FOREST L. REV. 1129, 1134-39 (2001) (summarizing study showing no increase in punitive damages awards between 1991 and 1996).

ⁱⁱ Michael L. Rustad, *In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data*, 78 IOWA L. REV. 1, 92 (1992). (documenting that punitive damages are rarely awarded in products liability litigation and one in two awards are reversed or remitted by trial or appellate judges); Michael L. Rustad & Thomas Koenig, *Targeting Amoral Corporations, Not "Moral Monsters,"* 47 RUTGERS L. REV. 975 (1995); see also, Theodore Eisenberg et. al., *Juries, Judges and Punitive Damages: An Empirical Study*, 87 CORNELL L. REV. 743 (2002) (finding that juries rarely award punitive damages and are less likely than judges to award punitive damages).

ⁱⁱⁱ RICHARD BLATT, PUNITIVE DAMAGES: A STATE-BY-STATE GUIDE TO LAW AND PRACTICE § 3.3 at 175 (2004 ed.).

^{iv} *Id.*

^v Michael L. Rustad, *The Closing of Punitive Damages' Iron Cage*, 38 LOY. L.A. L. REV. (forthcoming Spring 2005).

^{vi} *Id.* (documenting that 40 of the 45 states recognizing punitive damages have enacted one or more tort reforms since 1979). Two out of the five states who did not enact general punitive damages restrictions have experimented with limitations on the remedy. Delaware has enacted tort limitations on punitive damages in medical malpractice cases that are inapplicable to other substantive fields. See, Del. Code Tit. 18 § 6855 (mandating bifurcated proceedings and a statutorily prescribed standard of conduct for obtaining punitive damages against health care professionals). New York enacted a state-splitting statute but repealed it. The state legislature assumed that the 1992 split/share statute would result in sizable revenue. However, the state received only four orders or judgments awarding punitive damages in the first ten months after its effective date. New York collected only \$15,000 from its share of punitive damages in all substantive areas of the law. Gary Spencer, *Punitive Damages Tax Yields Little So Far*, N.Y.L.J. 1 (Nov. 1992) (arguing that the low yield of New York's split recovery statute suggests that there is a perverse incentive to structure post-verdict settlements to eliminate the punitive component).

^{vii} Michael L. Rustad, *The Closing of Punitive Damages' Iron Cage*.

^{viii} Richard Blatt, PUNITIVE DAMAGES: A STATE-BY-STATE GUIDE TO LAW AND PRACTICE (2004 ed.).

^{ix} *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

^x *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1995) (vacating a multi-million dollar punitive damages award against a Japanese manufacturer on the grounds that Oregon did not provide for a mandated post-verdict review of the award for excessiveness).

^{xi} Michael L. Rustad, *Unraveling Punitive Damages: Current Data and Further Inquiry*, 1998 WISC. L. REV. 14 (1998) (summarizing all studies of post-verdict adjustments of punitive damages).

^{xii} See Catherine Sharkey, *Punitive Damages as Societal Damages*, 113 YALE L.J. 347 (2003) (summarizing split-share tort reforms).

^{xiii} See generally, Thomas H. Koenig & Michael L. Rustad, *IN DEFENSE OF TORT LAW* (NYU Press 2002).