

# Punitive Damages

## Reforms Can Improve Clarity, Objectivity, Align California with Similar States

### Summary

#### Background

For the last several years, punitive damages reform has remained a top-requested state-level policy reform in the annual U.S. Chamber/Harris 50-states legal climate survey of in-house counsel and senior attorneys representing businesses. In the same survey, California's punitive damages system consistently ranks in the bottom 10.

#### Current State/Federal Policy

The U.S. Supreme Court in *BMW of North America v. Gore*, 116 S.Ct. 1589 (1996), provided several guideposts for ensuring punitive damages awards are reasonable and proportionate to the wrong committed. The court explicitly refrained from providing a specific ratio or cap. In so doing, the court left the states broad discretion to establish punitive damages standards.

Many state legislatures have adopted punitive damages standards that guard against excessive awards. Five states prohibit punitive damages altogether in civil actions. Twenty-two states impose some form of cap or formula.

By contrast, California has no limits. Juries are instructed on constitutional guideposts, but ultimately may award any amount—from zero to millions or billions of dollars. Absent a trial judge reducing an excessive award, a defendant's only recourse is expensive and lengthy appeals.

A study by Cornell Law School Professor Theodore Eisenberg suggests that, nationally, California has the greatest percentage of punitive damages awards. The study, which examined punitive damages awards in 22 states from 1992 to 2001, shows that California accounted for a full 28.9 percent of the punitive damages awards among all the states in the study.

#### Recent Legislation

California Chamber of Commerce-sponsored SB 423 (Harman; R-Huntington Beach) in the 2007-08 legislative session would have helped improve California's punitive damages system by preventing excessive punitive damages awards with a cap that limited them to an amount no greater than three times the compensatory damages award. The legislation failed passage in the Senate Judiciary Committee in 2008.

#### Anticipated Action

The CalChamber is exploring reforms that would help reduce unnecessary waste and costs for the courts and all parties by clarifying civil procedure rules relating to new trials and appeals of punitive damages awards.

### CalChamber Position

The CalChamber supports reforms that improve the clarity and objectivity of California's punitive damages system and bring it more in line with limits adopted by other similar states.

### Reasons for Position

- Studies indicate that nationally the punitive damages threat is most significant in California.
- Injured plaintiffs should be made completely whole through compensatory damages, but a penalty system that provides plaintiffs and their attorneys with additional monetary sums in amounts hundreds of times greater is arbitrary, counterproductive and a questionable windfall.
- The state's arbitrary punitive damages system contributes to California's low national legal climate ranking.

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