

# 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.

Landmark federal and state court decisions, intended to provide guidelines to prevent excessive punitive damages awards, have provided little reassurance. The complexity and mixed messages in some of these decisions appear to have instead spurred controversy and litigation.

#### 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. One of these is that punitive damages awards should bear a reasonable relationship to the actual or potential harm suffered by the plaintiff. The court, nonetheless, 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. More than a dozen states have a cap of a 3-to-1 or smaller ratio to compensatory damages that applies to some or all cases. New Jersey has a cap of the greater of five times or \$350,000. Some states are stricter: Connecticut confines punitive damages to litigation costs, and Michigan does not allow them if compensatory damages have already made the plaintiff whole. 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, which sometimes last years.

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, including New York, Michigan, Illinois and Texas. Texas ranked second highest at 20 percent.

#### 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. This bill struck a reasonable balance by allowing punitive damages to still be awarded in egregious cases, but requiring juries to do so within a range of zero to three times compensatory damages. The legislation failed passage in the Senate Judiciary Committee in 2008.

### 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.
- An arbitrary punitive damages system hurts the state's business climate. California's national legal ranking is 44th out of a worst of 50.

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