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Punitive Damages in the United States

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(ii) prevention: This refers to the condemned, who, once executed, cannot again kill. This conclusion is indisputable.

(iii) deterrent: Whether the fear of the death penalty actually deters others from committing murder has been debated for decades. Experts have not concurred as to the deterrent effect of capital statutes.

(iv) *(He “got what he deserved”: Retribution seems to be underlying rationale for those who favor retention of capital punishment. Many refer to the Old Testament as confirming this position: “...life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.”²³

Against

(i) costs: Somewhat peculiarly, both advocates and opponents list cost as a supportive factor. Opponents refer to the substantial costs of the necessary protracted appeals process (court costs and time, public financial responsibility for defense attorney fees, for example). A life penalty would avoid such expenses.

(ii) execution after an incorrect judgment is irreversible: This statement is not subject to argument. However, one should remember the difference between the terms “innocent” and “not guilty.” The former would mean that the defendant actually had not committed the crime of which he was convicted, whereas the latter, that whether he actually committed the crime, he had not been proven guilty under the law. Most of those few instances where an inmate has been pardoned or granted a new trial while on death row refer to the “not guilty” category.

23 Exodus 21: 23-24. However, Biblical mandates are neither material nor probative as evidence in American courts because of the First Amendment prohibition of governmental establishment of religion.

(iii) Capital punishment judgments are imposed disproportionately against blacks and the poor: This argument has been tried and failed. The Supreme Court has refuted its relevance.²⁴

(iv) *such punishment is fundamentally wrong and immoral: Most opponents of capital punishment concede that this ground is the persuasive one for them. Many also cite the Old Testament as substantiating their position: “Thou shalt not kill.”²⁵

IV. Conclusion

During the last three decades, the U.S. Supreme Court has handed down a host of opinions on state capital punishment statutes. Significantly, the Court has never held the death penalty itself to be “cruel and unusual punishment, and therefore unconstitutional.”

Perhaps the most compelling reversals have been the Court’s overrulings of its prior positions regarding minors and retarded persons. In the early years of this century, the Court narrowly held executions of persons under age 18 and/or the mentally retarded when the crime as committed to be unconstitutional.

The greater percentage of blacks sentenced to death continues to be judicially regarded as merely a coincidence. Additionally, legal challenges to each of the five currently used methods of execution have failed.

Meanwhile, the death penalty remains alive and well in “the land of the free.”²⁶

24 *McCleskey v. Kemp*, supra n. 19.

25 This is one of the Ten Commandments. Deuteronomy 5:17. But see supra n. 23.

26 The author recommends the following website (Washington, D.C.) for up-to-date information on the death penalty in the United States: www.deathpenalty.org

*Jack M. Beermann**

Punitive Damages in the United States

In 1990, Dr. Ira Gore bought a new BMW 535i for about \$40,000 from a dealer in Birmingham, Alabama. He soon became dissatisfied with its appearance, and when he took it to “Slick Finish,” an automobile detailer, he learned that the car had been repainted before he bought it. Dr. Gore then found out that BMW of North America had a policy of repainting damaged new cars without informing either the dealer or the ultimate purchase. Dr. Gore then did what any red blooded American would do, he sued BMW, asking for \$500,000 in compensatory and punitive damages and costs. While that may seem like a lot of money for a relatively benign economic injury, the Alabama jury went one better and awarded Dr. Gore compensatory damages of \$4000, representing the difference in value between a non-repainted new BMW and the repainted BMW sold to Dr. Gore, and \$4 million in punitive damages, apparently representing \$4000 for each of the 1000 cars that BMW had repainted and sold as new. The Supreme Court of Alabama reduced the award to the still substantial sum of \$2 million, but ultimately the Supreme Court of the United States reversed and remanded the case to the Alabama Supreme Court on the ground that even the lower \$2 million award was unconstitutionally high.¹ The U.S. Supreme Court left it to the

Alabama court to determine an appropriate, albeit much lower, amount.

The *Gore* case illustrates the current debate in the United States over punitive damages. In civil cases, the compensatory damages remedy fully compensates the plaintiff for his injuries. In the United States, however, an additional remedy, punitive damages, also known as exemplary damages and “smart money,” is sometimes available above and beyond compensatory damages, to punish the defendant and deter similar conduct. Punitive damages have become controversial in recent years, mainly because of high awards in cases that have been subject to criticism in the media, such as a near \$3 million award to a woman who spilled hot coffee on herself at a McDonald’s restaurant and the \$4 million Dr. Gore almost got over his repainted BMW.

This article is an attempt to acquaint the reader with contemporary legal issues surrounding punitive damages in the United States. Pursuant to U.S. federalism, most private law in the United States is state law and can vary significantly from state to state. Contract law, tort (injury) law, property law and criminal law are mainly state law. Many of these areas are governed largely by common law which means that there are no statutes, and courts make the law in the course of resolving individual legal controversies. It is the state common law of injury that

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1 *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

allows punitive damages in the United States. Thus, most of the law that is discussed in this article is made by state judges in the absence of governing statutes.

Origins of Punitive Damages

Punitive damages originated in the common law of England, which was adopted by each of the states when they became independent or came into existence. In England, the common law courts asserted the power to award punitive damages in the eighteenth century, mainly as a supplement to an underdeveloped criminal law system.² While most U.S. states followed this common law, some states, including Massachusetts, have ruled against punitive damages, holding that punitive damages are available only when specified by the legislature in a statute.³

Punitive Damages Basics

In most states, punitive damages may be awarded on a showing that the defendant acted with malice toward the defendant, which means that the defendant acted either with a bad intent toward the plaintiff or that the defendant consciously disregarded a known risk of injury to the plaintiff. This standard is sometimes referred to as “willful and wanton misconduct.” The defendant’s conduct must involve aggravating factors above and beyond ordinary negligence. In a minority of states, proof of bad intent may be required before punitive damages are awarded, but the predominant view is that it is sufficient for the plaintiff to show that the defendant knowingly disregarded a known risk of harm to the plaintiff.

Unlike compensatory damages, a plaintiff is never entitled to punitive damages. Even if the legal requirements for a punitive award are met, it is not legal error for a jury to refuse to award them. If the judge decides that the plaintiff’s evidence, if believed, meets the standard for an award of punitive damages, the judge will instruct the jury that in addition to compensatory damages, it may award punitive damages if it finds that the facts establish that the legal standard has been satisfied and if the jury finds that an award is justified by the goals of punishment and deterrence. The jury may also be told that this is an essentially moral judgment in the discretion of the jury. The judge will not require the jury to make a punitive award under any circumstances. By contrast, if a jury fails to award compensatory damages when the evidence conclusively establishes that they should be awarded, the judge will either award them himself or order a new trial.

In order for a punitive award to punish and deter, it must be large enough to make a difference to the defendant. This means that the jury will often be told something about the wealth of the defendant. When the defendant is a large corporation or wealthy individual, plaintiffs are happy to be able to introduce evidence of the defendant’s wealth. This can lead to very large punitive awards, as juries make multi-million dollar awards against defendants with assets in the hundreds of millions or billions of dollars.

If the jury does make an award, the judge has the power to reduce if it is excessive. While there are certain guidelines that judges apply to determine whether an award is excessive, the inquiry is seriously lacking in precision (as is the jury’s initial decision about how much to award). The judge will consider such factors as the reprehensibility of the defendant’s conduct, the seriousness of the injuries suffered by the plaintiff, whether

the defendant’s misconduct is widespread and ongoing, the size of punitive awards in similar cases, the relationship between the compensatory and punitive awards and the relationship between available criminal and civil penalties and the punitive award. On the latter factors, the greater the difference the more likely the judge will reduce the award.

Why punitive damages?

There have been several reasons offered in favor of allowing punitive damages.⁴ Judge Richard Posner, a leading legal scholar and proponent of the economic analysis of the law, has explained the reasons as follows: 1) Compensatory damages often do not fully compensate for injuries because in many cases, such as harms to dignity, the damages are very uncertain. Also, compensatory damages do not include the costs of litigation, mainly lawyers’ fees, in the U.S. 2) If compensatory damages do not fully compensate, socially harmful conduct will be underdeterred. 3) Punitive damages channel transactions to the market where compensatory damages are not as high as the gains to defendants. For example, if a defendant has taken property worth \$1 on the market that the defendant values at \$2, limiting the plaintiff to the compensatory remedy of \$1 would allow defendants to initiate involuntary transfers of property whenever they place a higher value on the property than does the market. Punitive damages deter this sort of involuntary transaction. 4) Punitive damages provide proper deterrence in cases in which some percentage of defendants are able to conceal their conduct or where some plaintiffs do not bother to sue because the damages are too small. Ideally, the damages would be increased by exactly the percentage of compensatory damages that will never be awarded due to concealment or failure to sue. 5) Punitive damages allow the community to express disapproval of certain conduct. 6) Punitive damages may relieve pressure on the criminal justice system to pursue minor crimes. 7) Punitive damages may discourage a breach of the peace by plaintiffs who want the defendant to be punished when the criminal justice system would not act because the crime is too minor in relation to others.

The arguments against punitive damages are many. The most basic argument is that they may lead to overdeterrence of socially useful behavior especially when unguided juries make very large awards. If a plaintiff is able to recover more than the actual losses from tortious conduct, a defendant will have to take the additional damages into account when deciding how to behave and this will be inefficient. For example, if a machine can be made safe only by adding \$1000 to its cost, and the damages caused by the machine average out to \$500 per machine, it is socially inefficient to add the safety feature. However, if plaintiffs can recover an additional \$1500 in punitive damages per machine, then the maker of the machine will be induced to spend \$500 per machine more than the actual damages avoided. Another common argument against punitive damages is that they are unpredictable and tend to reflect the whim of the jury rather than any rational legal or economic analysis.

Examples of Punitive Damages Awards

Probably the most famous U.S. case involving punitive damages occurred when a woman sued McDonald’s after she spilled hot coffee on herself.⁵ Although people assume that she

² See *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672, 676-77 (7th Cir. 2003) citing *Dorsey D. Ellis, Jr.*, “Fairness and Efficiency in the Law of Punitive Damages,” 56 S. Cal. L. Rev. 1, 12-20 (1982).

³ This was stated by the great judge *Oliver Wendell Holmes, Jr.*, in *Burt v. Advertiser Newspaper Co.*, 154 Mass. 238, 28 N.E. 1 (1891).

⁴ See *Kemezy v. Peters*, 79 F.3d 33, 34-36 (7th Cir. 1996) (*Posner, J.*). See also *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672, 676-77 (7th Cir. 2003) (*Posner, J.*); *Richard Posner*, *Economic Analysis of Law* 206-07 (7th ed. 2007).

⁵ *Liebeck v. McDonald’s Restaurants, P.T.S., Inc.*, No. D-202 CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. Aug. 18, 1994).

was driving her car when the spill occurred, she actually was a passenger, and the car was not moving at the time. Further, she suffered real burns requiring hospitalization and surgery. Although in some states McDonald's would not even be liable in such a case (mainly because hot coffee is not defective by virtue of being hot⁶), a New Mexico jury found McDonald's liable and awarded the plaintiff \$160,000 in compensatory damages and \$2.7 million in punitive damages. The argument for punitive damages was that McDonald's purposely brewed its coffee at a very high temperature and knew, based on numerous prior claims (700 in the previous ten years), that its customers were likely to suffer serious burns if they spilled the coffee on themselves, which was not an unlikely occurrence since McDonald's served coffee at drive up windows and knew that people drank the coffee in their cars. The jury wanted to send McDonald's a message by awarding its coffee sales for two days to the plaintiff. What is less widely known about the case is that after the jury made its award, the judge found it excessive and reduced it to \$480,000 (three times compensatory damages). McDonald's appealed, and the elderly plaintiff, apparently hoping to receive the award during her lifetime, is reported to have settled for \$80,000. There are also reports that after the incident, the particular McDonald's reduced the temperature at which it serves its coffee.

The McDonald's case shows that juries, when confronted with serious injuries and a widespread practice, sometimes make very large punitive awards on top of relatively modest compensatory damages. It also illustrates how the legal system has adapted to this, by empowering judges to reduce excessive awards. Finally, the misimpressions that most people have about the case – that the plaintiff was driving, that she was not seriously hurt, that she received \$3 million – shows how sensational legal cases that are often misunderstood by the American public can fuel public debate.

The application of the “conscious disregard of a known risk” standard for awarding punitive damages is illustrated by another interesting case involving a butcher, a meat cutting machine and a finger.⁷ The plaintiff was cutting meat when his finger was cut off by the machine. He sued in an Illinois court, alleging that the machine's design was defective. He offered evidence that there had been 30 prior reported injuries with the same model and that other butchers had complained that the machine tended to pull their hands toward the cutting blades. The plaintiff argued that because the maker of the machine knew about the prior injuries, it had consciously disregarded a known risk to people using the machine. The jury agreed with the plaintiff and awarded him \$553,000 in compensatory damages and \$20 million in punitive damages.

The Supreme Court of Illinois reversed the award of punitive damages on the ground that the proof was insufficient to establish malice. The Illinois court noted that the defendant had sold 5816 such machines over a 10 year period. The court calculated that only .5% of that particular model had caused injuries and that an injury occurred in only .0000007% of the cuts made. This exceedingly small frequency of injury, the court concluded, was not sufficient to put the defendant on notice that its machine was so dangerous that it was willful and wanton misconduct to keep it on the market. On this basis, the court held that punitive damages were not available.

6 *Holowaty v. McDonald's Corp.*, 10 F. Supp.2d 1078 (D. Minn. 1998) (applying Minnesota law).

7 *Kopczick v. Hobart Corp.*, 308 Ill. App.3d 967, 721 N.E.2d 769 (Ill. App. 1989).

Another case, involving a small car with an exploding gas tank, illustrates the relationship between the standard for tort liability and the standard for punitive damages. In the 1970s, U.S. car makers struggled to produce small cars that were suddenly in demand after the first oil crisis. Ford Motor Company produced the Pinto with a gas tank design that made it prone to exploding when hit from the rear. In the U.S., we learn in law school that the standard of care in a normal tort situation is captured by the Hand formula (named for the famous 20th Century jurist Learned Hand) $B < PL$ under which a person is expected to adopt any precaution (**B**) that is cost-effective (based on the probability (**P**) times the likely loss (**L**)), and not adopt a precaution that is not, i.e. when $B > PL$. For example, if a machine is 10 percent likely to cause \$10 in damage, $PL = \$1$, and if a safety precaution would cost \$2, it is not negligent for the maker of the machine to fail to adopt the precaution. However, if a precaution costing \$1 would save \$2 in damages, then it is negligent not to take the precaution.

Ford Motor Company calculated that the cost of a solution to the Pinto's explosive gas tank (amounting to \$12 per car across millions of cars) was higher than the damages it would pay to the victims (and survivors) of explosions. From the plaintiffs' perspective, Ford was guilty of outrageous conduct in opting to pay damages rather than save lives. From Ford's perspective, it was merely following the law and deciding whether to take precautions based on a cost-benefit analysis. The plaintiffs were able to obtain a copy of a memorandum containing this cost-benefit analysis, and based on that evidence, the California court hearing a case arising out of one of the many Pinto explosions held that Ford had consciously disregarded a known risk of serious injury or death, and thus could be held liable for punitive damages.⁸ Because of a technicality in California law at the time, survivors of the dead victims were not eligible for punitive damages, so a jury award of \$125 million in punitive damages (on top of \$2.5 million in compensatory damages) was reduced by the court to \$3.5 million.

The final case we will look at raises issues concerning the relevance of the defendant's wealth to the award of punitive damages and the relationship between punitive damages awards and the criminal justice system. In one of the most celebrated trials of the 20th Century, former football player and actor O.J. Simpson was charged, but acquitted, of the murder of his former wife and her friend. After the acquittal by the criminal court, the families of the victims brought a civil suit against Simpson. The jury in that case found Simpson liable and awarded the plaintiffs \$12.5 million in compensatory damages and \$25 million in punitive damages.⁹ Simpson appealed, claiming that the award was too large and that the jury should not have been allowed to consider evidence of his future earning capacity. The California court rejected his appeal, holding that his conduct (murder) was reprehensible and that evidence of his future earning potential was appropriate to ensure that the punitive award had its desired effect.

It might be asked how, after Simpson was acquitted by the criminal court, can a civil jury punish him for a crime that according to the criminal system he did not commit? The answer lies in the different standards of proof governing the two systems – a criminal conviction requires guilt beyond a reasonable doubt while a civil award only requires a preponderance of the evidence, i.e. that it be more likely than not that the defendant committed the alleged conduct. A convicted defendant cannot

8 *Grimshaw v. Ford Motor Company*, 119 Cal.App.3d 757, 174 Cal.Rptr. 348 (1981).

9 *Rufo v. Simpson*, 86 Cal.App.4th 573, 103 Cal.Rptr.2d 492 (2001).

contest his guilt in a civil court but an acquitted defendant can be held civilly liable on a lower standard of proof.

Taken together, these cases provide a glimpse into the jurisprudence of punitive damages. We see that while juries are relatively unguided in the amount of punitive damages they award and often decide on very large awards, judges are ready, willing and able to step in and reduce them if they are excessive or eliminate them altogether if the standard for an award is not met. Further, we see that a company may run into trouble if it explicitly compares the damages it is likely to pay to the cost of taking precautions, at least when serious personal injury is involved. Finally, we see that acquitted criminal defendants may still be punished by the civil justice system.

Some Further Issues Raised By Punitive Awards

Punitive damages awards have been subjected to serious criticisms in recent years, especially in the context of what is perceived as a litigious society with runaway juries making very large awards of both compensatory and punitive damages. The tort reformers in the U.S. have set their sights on punitive damages.

One criticism is that the civil system should focus only on compensation and should leave punishment and deterrence (beyond the deterrence inherent in a compensatory award) to the criminal system. On this view, it is thought unfair to subject a defendant to a civil punitive award that may be greater than any criminal fine for the conduct especially when the standard of proof may be low and the juries are relatively unguided. The unfairness is especially great in cases like the O.J. Simpson case in which the defendant has been exonerated in the criminal system. But even if the defendant has been found guilty in the criminal system, punitive damages in a later civil suit look like double jeopardy. Further, multiple civil courts in various states may hold the defendant liable for punitive damages for the same conduct. The potential for unfairness to defendants in punitive damages cases is very significant.

Because a punitive award is in addition to full compensatory damages, it has been argued that the punitive award should go to the state or to other (uncompensated) victims of the defendant's misconduct. The plaintiff has no need for the punitive damages and no moral claim to them. The problem is that if punitive awards went to the state, plaintiffs would have no incentive to seek them. If we believe in the justifications for punitive damages discussed above, we would not want to eliminate them, and a requirement that the award go to the state would virtually assure that no plaintiff other than the state would seek a punitive award.

States have responded to these criticisms with some moderate reforms. In some states, the amount of punitive awards has been limited either as an absolute amount or in some relation to compensatory damages. Another reform has required that a portion of the money awarded as punitive damages go to the state, in recognition that the plaintiff has no real entitlement to the money and that some of it should be used to compensate other victims. However, the real action in punitive damages awards has been at the U.S. Supreme Court level, which is discussed next.

U.S. Supreme Court Punitive Damages Limitations

The Supreme Court of the United States, being a federal court, has no jurisdiction to make changes to state common law. Therefore, in order for a defendant to bring allegedly excessive punitive awards to that court's attention, there must be a claimed violation of federal law, such as the federal constitution.

In a series of cases going back only to 1996, the U.S. Supreme Court has held that excessive punitive damages awards can violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, which prohibits states from depriving any person of life, liberty or property without due process of law. Constitutional interpretation at the U.S. Supreme Court is rather creative, so that the very same clause that governs the right to abortion also governs the allowable size of punitive damage awards.

The first case in which the Supreme Court ruled that a punitive damages award violated due process was the case involving the repainted BMW discussed above.¹⁰ In that case, the U.S. Supreme Court stated that due process requires that courts take into account the following three factors when evaluating whether an award of punitive damages is unconstitutionally high: 1) the reprehensibility of the defendant's conduct (here the conduct involved only economic loss and was not so bad); 2) the ratio between compensatory and punitive damages (here the ratio was very high, about 500 to 1); and 3) the size of civil and criminal penalties that apply to the conduct (here the maximum fine was much smaller than the award). The court made a weak attempt to link its analysis to traditional due process principles by arguing that a defendant would not have fair notice that its conduct might subject it to punitive damages in excess of what is allowed based on these three factors. Although the court stated that these factors are required by due process, it should be noted that they are derived from the common law of many states that apply them when deciding whether a particular punitive award is excessive. It's as if the Supreme Court found the best common law and adopted it as a matter of constitutional right.

More recently, the Supreme Court has decided two more cases, one involving the permissible ratio between punitive and compensatory damages, and the other involving what harm a court may take into account when awarding punitive damages. In the first case, a Utah jury had awarded an insured \$1 million in compensatory damages and \$145 million in punitive damages in a case involving the State Farm insurance company's failure to settle claims against its insured.¹¹ The ratio between punitive and compensatory damages was a very 145:1, which under the *Gore* case weighs in favor of finding a due process violation. The Supreme Court focused on the ratio and held that a punitive award of greater than nine times compensatory damages is likely to be unconstitutional. This sort of mathematical precision is not traditionally thought of as within the judicial role. The court also held that it was improper to allow the jury to consider conduct by the defendant in other states where it might not have been unlawful, and that under the *Gore* factors, the \$145 million award was excessive.

In the most recent case Supreme Court punitive damages case, the court reviewed an Oregon court's punitive award of \$79.5 million (on top of about \$1.5 million in compensatory damages) against the tobacco company Phillip Morris to the family of a deceased smoker. In that case, the court held that due process was violated because the jury was told that it could consider harm to other smokers, not just the harm to the plaintiff in the case.¹² If the Supreme Court insists that juries are not allowed to consider harm to others, this latest ruling is likely to have far reaching effects and is inconsistent with one of the bases for punitive damages, that they create the proper incentives when other plaintiffs might not bring suit because

¹⁰ *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

¹¹ *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

¹² *Phillip Morris USA v. Williams*, 127 S. Ct. 1057 (2007).

the compensatory damages would be too small or because the case might be too difficult to win.

In the *State Farm* case, the court held that most, but not necessarily all, punitive awards of greater than nine times compensatory damages were unconstitutional. The court recognized that special circumstances might justify a higher ratio. In a case in which special circumstances were found, Judge Posner, and the U.S. Court of Appeals on which he sits, upheld an award of \$186,000 on top of a compensatory award of only \$5000.¹³ (The case was in federal court because the parties were from different states. In such cases state law applies and in particular in this case the court was applying Illinois law.) The case involved bed bugs in hotel rooms. The defendant apparently knew that its hotel was infested with bed bugs but did not want to close the hotel temporarily to eliminate them. The hotel would designate rooms as infested and post them as not rentable, but then it would go ahead and rent them anyway. The management also lied and told the guests that the bugs were ticks, apparently believing people would be less repulsed by ticks than by bed bugs. When a brother and sister who stayed in the hotel and were bitten by the bed bugs and sued, Judge Posner held that the high punitive award, far above the nine times compensatory ratio, was justified because while many guests were bitten, few would sue for such small compensatory damages, the defendant was earning substantial profits by concealing the harm, and the defendant litigated the case very aggressively, apparently to discourage guests to sue for such small compensatory damages. Because Judge Posner's decision allowed the jury to take into account harm to guests who did not sue, it probably violates the rule in the later *Phillip Morris* decision.

Business interests have praised the Supreme Court for beginning a process of reining in excessive punitive damages awards under state law. The Court is not, however, without its critics who argue that the federal courts, including the U.S. Supreme Court, have no business supervising state common law remedies. To the critics, the Court is engaged in the same

sort of judicial activism that led to abortion on demand and limits on school prayer, rulings that are general criticized by conservatives who tend to favor judicially-imposed limits on punitive damages.

The Future of Punitive Damages

Punitive damages are under attack as part of a serious problem of an overly litigious society. Excessive punitive awards along with high compensatory awards are blamed for numerous social ills. Business interests complain that litigation costs are driving up the cost of doing business to the point of making socially desirable businesses unprofitable. Governments claim that many recreational activities are no longer feasible because of potential liability. Doctors claim to be living in a crisis caused by high malpractice insurance premiums that may be due, in part, to the potential for large punitive awards.

Calls for tort reform have resulted in some successes, although legislative efforts to limit punitive and other damages have not been very successful overall, as people seem to view efforts to limit remedies as business interests acting against the little guy. Perhaps the future of punitive damages is best illustrated by what happened in Colorado in 1884. At that time, the Colorado Supreme Court decided that the common allowing punitive damages would not apply in that state.¹⁴ It viewed punitive damages as totally illegitimate and invasive of the province of the criminal law. That court characterized punitive damages as inconsistent with fundamental legal principles and painted a picture of a growing trend across the country of courts rejecting punitive damages. Within five years, the Colorado legislature overrode the court and reinstated punitive damages in Colorado¹⁵ and the court's purported anti-punitive damages trend never materialized. Today, however, there is clearly pressure on the size of punitive damage awards, and significant limitations have been put in place at the U.S. Supreme Court level. Nevertheless, it appears that punitive damages will remain an element of the U.S. legal system at least for some time to come.

¹⁴ *Murphy v. Hobbs*, 7 Colo. 541, 5 P. 119 (1884).

¹⁵ See Colorado Sess. Laws 1889, p. 64.

¹³ *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003).