

TOPIC
PUNITIVE DAMAGES

Supreme Court of the United States
BMW OF NORTH AMERICA, INC.v. GORE
517 U.S. 559, 116 S.Ct. 1589 (1996)

Justice STEVENS delivered the opinion of the Court.
[1] The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a " 'grossly excessive' " punishment on a tortfeasor. *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 454, 113 S.Ct. 2711, 2718, 125 L.Ed.2d 366 (1993) (and cases cited). The wrongdoing involved in this case was the decision by a national distributor of automobiles not to advise its dealers, and hence their customers, of pre-delivery ****1593** damage to new cars when the cost of repair amounted to less than 3 percent of the car's suggested retail price. The question presented ***563** is whether a \$2 million **punitive damages** award to the purchaser of one of these cars exceeds the constitutional limit.

I
In January 1990, Dr. Ira Gore, Jr. (respondent), purchased a black **BMW** sports sedan for \$40,750.88 from an authorized **BMW** dealer in Birmingham, Alabama. After driving the car for approximately nine months, and without noticing any flaws in its appearance, Dr. Gore took the car to "Slick Finish," an independent detailer, to make it look " 'snazzier than it normally would appear.' " 646 So.2d 619, 621 (Ala.1994). Mr. Slick, the proprietor, detected evidence that the car had been repainted. [FN1] Convinced that he had been cheated, Dr. Gore brought suit against petitioner **BMW** of North America (**BMW**), the American distributor of **BMW** automobiles. [FN2] Dr. Gore alleged, *inter alia*, that the failure to disclose that the car had been repainted constituted suppression of a material fact. [FN3] The complaint prayed for \$500,000 in compensatory and **punitive damages**, and costs.

FN1. The top, hood, trunk, and quarter panels of Dr. Gore's car were repainted at **BMW's** vehicle preparation center in Brunswick, Georgia. The parties presumed that the damage was caused by exposure to acid rain during transit between the manufacturing plant in Germany and the preparation center.

FN2. Dr. Gore also named the German manufacturer and the Birmingham dealership as defendants.

FN3. Alabama codified its common-law cause of action for fraud in a 1907 statute that is still in effect. *Hackmeyer v. Hackmeyer*, 268 Ala. 329, 333, 106 So.2d 245, 249 (1958). The statute provides: "Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case." Ala.Code § 6-5-102 (1993); see Ala.Code § 4299 (1907).

At trial, **BMW** acknowledged that it had adopted a nationwide policy in 1983 concerning cars that were damaged in the course of manufacture or transportation. If the cost of repairing the damage exceeded 3 percent of the car's suggested retail price, the car was placed in company service for a period of time and then sold as used. If the repair cost did not exceed 3 percent of the suggested ***564** retail price, however, the car was sold as new without advising the dealer that any repairs had been made. Because the \$601.37 cost of repainting Dr. Gore's car was only about 1.5 percent of its suggested retail price, **BMW** did not disclose the damage or repair to the Birmingham dealer.

Dr. Gore asserted that his repainted car was worth less than a car that had not been refinished. To prove his actual damages of \$4,000, he relied on the testimony of a former **BMW** dealer, who estimated that the value of a repainted **BMW** was approximately 10 percent less than the value of a new car that had not been damaged and repaired. [FN4] To support his claim for **punitive damages**, Dr. Gore introduced evidence that since 1983 **BMW** had sold 983 refinished cars as new, including 14 in Alabama, without disclosing that the cars had been repainted before sale at a cost of more than \$300 per vehicle. [FN5] Using the actual damage estimate of \$4,000 per vehicle, Dr. Gore argued that a punitive award of \$4 million would provide an appropriate penalty for selling approximately 1,000 cars for more than they were worth.

FN4. The dealer who testified to the reduction in value is the former owner of the Birmingham dealership sued in this action. He sold the dealership approximately one year before the trial.

FN5. Dr. Gore did not explain the significance of

the \$300 cutoff.

In defense of its disclosure policy, **BMW** argued that it was under no obligation to disclose repairs of minor damage to new cars and that Dr. Gore's car was as good as a car with the original factory finish. It disputed Dr. Gore's assertion that the value of the car was impaired by the repainting and argued that this good-faith belief made a punitive award inappropriate. **BMW** also maintained that transactions in jurisdictions other than Alabama had no relevance to Dr. Gore's claim.

*565 The jury returned a verdict finding **BMW** liable for compensatory damages of **1594 \$4,000. In addition, the jury assessed \$4 million in **punitive damages**, based on a determination that the nondisclosure policy constituted "gross, oppressive or malicious" fraud. [FN6] See Ala.Code §§ 6-11-20, 6-11-21 (1993).

FN6. The jury also found the Birmingham dealership liable for Dr. Gore's compensatory damages and the German manufacturer liable for both the compensatory and **punitive damages**. The dealership did not appeal the judgment against it. The Alabama Supreme Court held that the trial court did not have jurisdiction over the German manufacturer and therefore reversed the judgment against that defendant.

BMW filed a post-trial motion to set aside the **punitive damages** award. The company introduced evidence to establish that its nondisclosure policy was consistent with the laws of roughly 25 States defining the disclosure obligations of automobile manufacturers, distributors, and dealers. The most stringent of these statutes required disclosure of repairs costing more than 3 percent of the suggested retail price; none mandated disclosure of less costly repairs. [FN7] Relying on these statutes, **BMW** contended that its conduct was lawful in these States and therefore could not provide the basis for an award of **punitive damages**.

FN7. **BMW** acknowledged that a Georgia statute enacted *after* Dr. Gore purchased his car would require disclosure of similar repairs to a car before it was sold in Georgia. Ga.Code Ann. §§ 40-1-5(b)-(e) (1994).

BMW also drew the court's attention to the fact that its nondisclosure policy had never been adjudged unlawful before this action was filed. Just months before Dr. Gore's case went to trial, the jury in a similar lawsuit filed

by another Alabama **BMW** purchaser found that **BMW's** failure to disclose paint repair constituted fraud. *Yates v. BMW of North America, Inc.*, 642 So.2d 937 (Ala.1993). [FN8] Before the *566 judgment in this case, **BMW** changed its policy by taking steps to avoid the sale of any refinished vehicles in Alabama and two other States. When the \$4 million verdict was returned in this case, **BMW** promptly instituted a nationwide policy of full disclosure of all repairs, no matter how minor.

FN8. While awarding a comparable amount of compensatory damages, the *Yates* jury awarded no **punitive damages** at all. In *Yates*, the plaintiff also relied on the 1983 nondisclosure policy, but instead of offering evidence of 983 repairs costing more than \$300 each, he introduced a bulk exhibit containing 5,856 repair bills to show that petitioner had sold over 5,800 new **BMW** vehicles without disclosing that they had been repaired.

In response to **BMW's** arguments, Dr. Gore asserted that the policy change demonstrated the efficacy of the **punitive damages** award. He noted that while no jury had held the policy unlawful, **BMW** had received a number of customer complaints relating to undisclosed repairs and had settled some lawsuits. [FN9] Finally, he maintained that the disclosure statutes of other States were irrelevant because **BMW** had failed to offer any evidence that the disclosure statutes supplanted, rather than supplemented, existing causes of action for common-law fraud.

FN9. Prior to the lawsuits filed by Dr. Yates and Dr. Gore, **BMW** and various **BMW** dealers had been sued 14 times concerning presale paint or damage repair. According to the testimony of **BMW's** in-house counsel at the postjudgment hearing on damages, only one of the suits concerned a car repainted by **BMW**.

The trial judge denied **BMW's** post-trial motion, holding, *inter alia*, that the award was not excessive. On appeal, the Alabama Supreme Court also rejected **BMW's** claim that the award exceeded the constitutionally permissible amount. 646 So.2d 619 (1994). The court's excessiveness inquiry applied the factors articulated in *Green Oil Co. v. Hornsby*, 539 So.2d 218, 223-224 (Ala.1989), and approved in *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 21-22, 111 S.Ct. 1032, 1045-1046, 113 L.Ed.2d 1 (1991). 646 So.2d, at 624-625. Based on its analysis, the court concluded that **BMW's** conduct was

"reprehensible"; the nondisclosure was profitable for the company; the judgment "would not have a substantial impact upon [BMW's] financial position"; the litigation had been expensive; no criminal sanctions had been imposed on BMW for the same conduct; the award of *no punitive \$567 damages* in *Yates* reflected "the inherent uncertainty of the trial process"; and the punitive award bore a "reasonable relationship" to "the harm that ***1595* was likely to occur from [BMW's] conduct as well as ... the harm that actually occurred." 646 So.2d, at 625-627.

The Alabama Supreme Court did, however, rule in BMW's favor on one critical point: The court found that the jury improperly computed the amount of **punitive damages** by multiplying Dr. Gore's compensatory damages by the number of similar sales in other jurisdictions. *Id.*, at 627. Having found the verdict tainted, the court held that "a constitutionally reasonable **punitive damages** award in this case is \$2,000,000," *id.*, at 629, and therefore ordered a remittitur in that amount. [FN10] The court's discussion of the amount of its remitted award expressly disclaimed any reliance on "acts that occurred in other jurisdictions"; instead, the court explained that it had used a "comparative analysis" that considered Alabama cases, "along with cases from other jurisdictions, involving the sale of an automobile where the seller misrepresented the condition of the vehicle and the jury awarded **punitive damages** to the purchaser." [FN11] *Id.*, at 628.

FN10. The Alabama Supreme Court did not indicate whether the \$2 million figure represented the court's independent assessment of the appropriate level of **punitive damages**, or its determination of the maximum amount that the jury could have awarded consistent with the Due Process Clause.

FN11. Other than *Yates v. BMW of North America, Inc.*, 642 So.2d 937 (Ala.1993), in which no **punitive damages** were awarded, the Alabama Supreme Court cited no such cases. In another portion of its opinion, 646 So.2d, at 629, the court did cite five Alabama cases, none of which involved either a dispute arising out of the purchase of an automobile or an award of **punitive damages**. *G.M. Mosley Contractors, Inc. v. Phillips*, 487 So.2d 876, 879 (1986); *Hollis v. Wyrosdick*, 508 So.2d 704 (1987); *Campbell v. Burns*, 512 So.2d 1341, 1343 (1987); *Ashbee v. Brock*, 510 So.2d 214 (1987); and *Jawad v. Granade*, 497 So.2d 471 (1986).

All of these cases support the proposition that appellate courts in Alabama presume that jury verdicts are correct. In light of the Alabama Supreme Court's conclusion that (1) the jury had computed its award by multiplying \$4,000 by the number of refinished vehicles sold in the United States and (2) that the award should have been based on Alabama conduct, respect for the error-free portion of the jury verdict would seem to produce an award of \$56,000 (\$4,000 multiplied by 14, the number of repainted vehicles sold in Alabama).

568* Because we believed that a review of this case would help to illuminate "the character of the standard that will identify unconstitutionally excessive awards" of **punitive damages, see *Honda Motor Co. v. Oberg*, 512 U.S. 415, 420, 114 S.Ct. 2331, 2335, 129 L.Ed.2d 336 (1994), we granted certiorari, 513 U.S. 1125, 115 S.Ct. 932, 130 L.Ed.2d 879 (1995).

II

[2][3] **Punitive damages** may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S.Ct. 2997, 3012, 41 L.Ed.2d 789 (1974); *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266-267, 101 S.Ct. 2748, 2759-2760, 69 L.Ed.2d 616 (1981); *Haslip*, 499 U.S., at 22, 111 S.Ct., at 1045-1046. In our federal system, States necessarily have considerable flexibility in determining the level of **punitive damages** that they will allow in different classes of cases and in any particular case. Most States that authorize exemplary damages afford the jury similar latitude, requiring only that the damages awarded be reasonably necessary to vindicate the State's legitimate interests in punishment and deterrence. See *TXO*, 509 U.S., at 456, 113 S.Ct., at 2719; *Haslip*, 499 U.S., at 21, 22, 111 S.Ct., at 1045, 1045-1046. Only when an award can fairly be categorized as "grossly excessive" in relation to these interests does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment. Cf. *TXO*, 509 U.S., at 456, 113 S.Ct., at 2719. For that reason, the federal excessiveness inquiry appropriately begins with an identification of the state interests that a punitive award is designed to serve. We therefore focus our attention first on the scope of Alabama's legitimate interests in punishing BMW and deterring it from future misconduct.

No one doubts that a State may protect its citizens by prohibiting deceptive trade practices and by requiring

automobile *569 distributors to disclose presale repairs that affect the **1596 value of a new car. But the States need not, and in fact do not, provide such protection in a uniform manner. Some States rely on the judicial process to formulate and enforce an appropriate disclosure requirement by applying principles of contract and tort law. [FN12] Other States have enacted various forms of legislation that define the disclosure obligations of automobile manufacturers, distributors, and dealers. [FN13] *570 The result is a patchwork of rules representing the diverse policy judgments of lawmakers in 50 States.

FN12. See, e.g., *Rivers v. BMW of North America, Inc.*, 214 Ga.App. 880, 449 S.E.2d 337 (1994) (nondisclosure of presale paint repairs that occurred before state disclosure statute enacted); *Wedmore v. Jordan Motors, Inc.*, 589 N.E.2d 1180 (Ind.App.1992) (same).

FN13. Four States require disclosure of vehicle repairs costing more than 3 percent of suggested retail price. Ariz.Rev.Stat. Ann. § 28-1304.03 (1989); N.C. Gen.Stat. § 20-305.1(d)(5a) (1995); S.C.Code § 56-32-20 (Supp.1995); Va.Code Ann. § 46.2-1571(D) (Supp.1995). An additional three States mandate disclosure when the cost of repairs exceeds 3 percent or \$500, whichever is greater. Ala.Code § 8-19-5(22)(c) (1993); Cal. Veh.Code Ann. §§ 9990-9991 (West Supp.1996); Okla. Stat., Tit. 47, § 1112.1 (1991). Indiana imposes a 4 percent disclosure threshold. Ind.Code §§ 9-23-4-4, 9-23-4-5 (1993). Minnesota requires disclosure of repairs costing more than 4 percent of suggested retail price or \$500, whichever is greater. Minn.Stat. § 325F.664 (1994). New York requires disclosure when the cost of repairs exceeds 5 percent of suggested retail price. N.Y. Gen. Bus. Law §§ 396-p(5)(a), (d) (McKinney Supp.1996).

Vermont imposes a 5 percent disclosure threshold for the first \$10,000 in repair costs and 2 percent thereafter. Vt. Stat. Ann., Tit. 9, § 4087(d) (1993). Eleven States mandate disclosure only of damage costing more than 6 percent of retail value to repair. Ark.Code Ann. § 23-112-705 (1992); Idaho Code § 49-1624 (1994); Ill. Comp. Stat., ch. 815, § 710/5 (1994); Ky.Rev.Stat. Ann. § 190.0491(5) (Baldwin 1988); La.Rev.Stat. Ann. § 32:1260 (West Supp.1995); Miss. Motor Vehicle Comm'n, Regulation No. 1 (1992); N.H.Rev.Stat. Ann. § 357-C:5(III)(d) (1995); Ohio Rev.Code Ann. §

4517.61 (1994); R.I. Gen. Laws §§ 31-5.1-18(d), (f) (1995); Wis. Stat. § 218.01(2d)(a) (1994); Wyo. Stat. § 31-16-115 (1994). Two States require disclosure of repairs costing \$3,000 or more. See Iowa Code Ann. § 321.69 (Supp.1996); N.D. Admin. Code § 37-09-01-01 (1992). Georgia mandates disclosure of paint damage that costs more than \$500 to repair. Ga.Code Ann. §§ 40-1-5(b)-(e) (1994) (enacted after respondent purchased his car). Florida requires dealers to disclose paint repair costing more than \$100 of which they have actual knowledge. Fla. Stat. § 320.27(9)(n) (1992). Oregon requires manufacturers to disclose all "postmanufacturing" damage and repairs. It is unclear whether this mandate would apply to repairs such as those at issue here. Ore.Rev.Stat. § 650.155 (1991).

Many, but not all, of the statutes exclude from the computation of repair cost the value of certain components--typically items such as glass, tires, wheels and bumpers--when they are replaced with identical manufacturer's original equipment. E.g., Cal. Veh.Code Ann. §§ 9990-9991 (West Supp.1996); Ga.Code Ann. §§ 40-1-5(b)-(e) (1994); Ill. Comp. Stat., ch. 815, § 710/5 (1994); Ky.Rev.Stat. Ann. § 190.0491(5) (Baldwin 1988); Okla. Stat., Tit. 47, § 1112.1 (1991); Va.Code Ann. § 46.2-1571(D) (Supp.1995); Vt. Stat. Ann., Tit. 9, § 4087(d) (1993).

That diversity demonstrates that reasonable people may disagree about the value of a full disclosure requirement.

Some legislatures may conclude that affirmative disclosure requirements are unnecessary because the self-interest of those involved in the automobile trade in developing and maintaining the goodwill of their customers will motivate them to make voluntary disclosures or to refrain from selling cars that do not comply with self-imposed standards. Those legislatures that do adopt affirmative disclosure obligations may take into account the cost of government regulation, choosing to draw a line exempting minor repairs from such a requirement. In formulating a disclosure standard, States may also consider other goals, such as providing a "safe harbor" for automobile manufacturers, distributors, and dealers against lawsuits over minor repairs. [FN14]

FN14. Also, a state legislature might plausibly conclude that the administrative costs associated with full disclosure would have the effect of raising car prices to the State's residents.

We may assume, *arguendo*, that it would be wise for every State to adopt Dr. Gore's preferred rule, requiring full disclosure of every presale repair to a car, no matter how trivial and regardless of its actual impact on the value of the car. *571 But while we do not doubt that Congress has ample authority to enact such a policy for the entire Nation, [FN15] it **1597 is clear that no single State could do so, or even impose its own policy choice on neighboring States. See *Bonaparte v. Tax Court*, 104 U.S. 592, 594, 26 L.Ed. 845 (1881) ("No State can legislate except with reference to its own jurisdiction.... Each State is independent of all the others in this particular"). [FN16] Similarly, one State's power to impose burdens on the interstate market for automobiles is not only subordinate to the federal power over interstate commerce, *Gibbons v. Ogden*, 9 Wheat. 1, 194-196, 6 L.Ed. 23 (1824), but is also constrained by the need to respect the interests of other States, see, e.g., *Healy v. Beer Institute*, 491 U.S. 324, 335-336, 109 S.Ct. 2491, 2498-2499, 105 L.Ed.2d 275 (1989) (the Constitution has a "special concern both with the maintenance of a national economic union unfettered by state-imposed limitations on *572 interstate commerce and with the autonomy of the individual States within their respective spheres" (footnote omitted)); *Edgar v. MITE Corp.*, 457 U.S. 624, 643, 102 S.Ct. 2629, 2641, 73 L.Ed.2d 269 (1982).

FN15. Federal disclosure requirements are, of course, a familiar part of our law. See, e.g., the Federal Food, Drug, and Cosmetic Act, as added by the Nutrition Labeling and Education Act of 1990, 104 Stat. 2353, 21 U.S.C. § 343; the Truth In Lending Act, 82 Stat. 148, as amended, 15 U.S.C. § 1604; the Securities & Exchange Act of 1934, 48 Stat. 892, 894, as amended, 15 U.S.C. §§ 781-78m; Federal Cigarette Labeling and Advertising Act, 79 Stat. 283, as amended, 15 U.S.C. § 1333; Alcoholic Beverage Labeling Act of 1988, 102 Stat. 4519, 27 U.S.C. § 215.

FN16. See also *Bigelow v. Virginia*, 421 U.S. 809, 824, 95 S.Ct. 2222, 2234, 44 L.Ed.2d 600 (1975) ("A State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State"); *New York Life Ins. Co. v. Head*, 234 U.S. 149, 161, 34 S.Ct. 879, 882, 58 L.Ed. 1259 (1914) ("[I]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State ... without throwing down the constitutional barriers by which all the

States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question and hence authorities directly dealing with it do not abound"); *Huntington v. Attrill*, 146 U.S. 657, 669, 13 S.Ct. 224, 228, 36 L.Ed. 1123 (1892) ("Laws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extra-territorial effect only by the comity of other States").

[4][5][6] We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States. [FN17] Before this Court Dr. Gore argued that the large **punitive damages** award was necessary to induce **BMW** to change the nationwide policy that it adopted in 1983. [FN18] But by attempting to alter **BMW's** nationwide policy, Alabama would be infringing on the policy choices of other States. To avoid such encroachment, the economic penalties that a State such as Alabama inflicts on those who transgress its laws, whether the penalties take the form of legislatively authorized fines or judicially imposed **punitive damages**, must be supported by the State's interest in protecting its own consumers and its own economy. Alabama may insist that **BMW** adhere to a particular disclosure policy in that State. Alabama does not *573 have the power, however, to punish **BMW** for conduct that was lawful where it occurred and that had no impact on Alabama or its residents. [FN19] **1598 Nor may Alabama impose sanctions on **BMW** in order to deter conduct that is lawful in other jurisdictions.

FN17. State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute. See *New York Times Co. v. Sullivan*, 376 U.S. 254, 265, 84 S.Ct. 710, 718, 11 L.Ed.2d 686 (1964) ("The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised"); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247, 79 S.Ct. 773, 780, 3 L.Ed.2d 775 (1959) ("[R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief").

FN18. Brief for Respondent 11-12, 23, 27-28; Tr. of Oral Arg. 50- 54. Dr. Gore's interest in

altering the nationwide policy stems from his concern that **BMW** would not (or could not) discontinue the policy in Alabama alone. Brief for Respondent at 11. "If Alabama were limited to imposing **punitive damages** based only on **BMW's** gain from fraudulent sales in Alabama, the resulting award would have no prospect of protecting Alabama consumers from fraud, as it would provide no incentive for **BMW** to alter the unitary, national policy of nondisclosure which yielded **BMW** millions of dollars in profits." *Id.*, at 23. The record discloses no basis for Dr. Gore's contention that **BMW** could not comply with Alabama's law without changing its nationwide policy.

FN19. See *Bordenkircher v. Hayes*, 434 U.S. 357, 363, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978) ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort"). Our cases concerning recidivist statutes are not to the contrary. Habitual offender statutes permit the sentencing court to enhance a defendant's punishment for a crime in light of prior convictions, including convictions in foreign jurisdictions. See *e.g.*, Ala.Code § 13A-5-9 (1994); Cal.Penal Code Ann. §§ 667.5(f), 668 (West Supp.1996); Ill. Comp. Stat., ch. 720, § 5/33B-1 (1994); N.Y. Penal Law §§ 70.04, 70.06, 70.08, 70.10 (McKinney 1987 and Supp.1996); Tex. Penal Code Ann. § 12.42 (1994 and Supp.1995-1996). A sentencing judge may even consider past criminal behavior which did not result in a conviction and lawful conduct that bears on the defendant's character and prospects for rehabilitation. *Williams v. New York*, 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949). But we have never held that a sentencing court could properly *punish* lawful conduct. This distinction is precisely the one we draw here. See n. 21, *infra*.

[7] In this case, we accept the Alabama Supreme Court's interpretation of the jury verdict as reflecting a computation of the amount of **punitive damages** "based in large part on conduct that happened in other jurisdictions." 646 So.2d, at 627. As the Alabama Supreme Court noted, neither the jury nor the trial court was presented with evidence that any of **BMW's** out-of-state conduct was unlawful. "The only testimony touching the issue showed that approximately 60% of the vehicles

that were refinished were sold in states where failure to disclose the repair was not an unfair trade practice." *Id.*, at 627, n. 6. [FN20] The Alabama Supreme Court therefore properly eschewed reliance on **BMW's** out-of-state conduct, *id.*, at 628, and based its remitted award solely on *574 conduct that occurred within Alabama. [FN21] The award must be analyzed in the light of the same conduct, with consideration given only to the interests of Alabama consumers, rather than those of the entire Nation. When the scope of the interest in punishment and deterrence that an Alabama court may appropriately consider is properly limited, it is apparent--for reasons that we shall now address--that this award is grossly excessive.

FN20. Given that the verdict was based in part on out-of-state conduct that was lawful where it occurred, we need not consider whether one State may properly attempt to change a tortfeasor's *unlawful* conduct in another State.

FN21. Of course, the fact that the Alabama Supreme Court correctly concluded that it was error for the jury to use the number of sales in other States as a multiplier in computing the amount of its punitive sanction does not mean that evidence describing out-of-state transactions is irrelevant in a case of this kind. To the contrary, as we stated in *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 462, n. 28, 113 S.Ct. 2711, 2722, n. 28, 125 L.Ed.2d 366 (1993), such evidence may be relevant to the determination of the degree of reprehensibility of the defendant's conduct.

III

[8][9] Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose. [FN22] Three guideposts, each of which indicates that **BMW** did not receive adequate notice of the magnitude of the sanction that Alabama might impose for adhering to the nondisclosure policy adopted in 1983, lead us to the conclusion that *575 the \$2 million award against **BMW** is grossly excessive: the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered by Dr. Gore and his **punitive damages** award; and the difference between this remedy and the civil penalties authorized **1599 or imposed in comparable cases. We discuss these considerations in turn.

FN22. See *Miller v. Florida*, 482 U.S. 423, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987) (*Ex Post Facto* Clause violated by retroactive imposition of revised sentencing guidelines that provided longer sentence for defendant's crime); *Bouie v. City of Columbia*, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964) (retroactive application of new construction of statute violated due process); *id.*, at 350-355, 84 S.Ct., at 1701-1703 (citing cases); *Lankford v. Idaho*, 500 U.S. 110, 111 S.Ct. 1723, 114 L.Ed.2d 173 (1991) (due process violated because defendant and his counsel did not have adequate notice that judge might impose death sentence). The strict constitutional safeguards afforded to criminal defendants are not applicable to civil cases, but the basic protection against "judgments without notice" afforded by the Due Process Clause, *Shaffer v. Heitner*, 433 U.S. 186, 217, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683 (1977) (STEVENS, J., concurring in judgment), is implicated by civil penalties.

Degree of Reprehensibility

[10] Perhaps the most important indicium of the reasonableness of a **punitive damages** award is the degree of reprehensibility of the defendant's conduct. [FN23] As the Court stated nearly 150 years ago, exemplary damages imposed on a defendant should reflect "the enormity of his offense." *Day v. Woodworth*, 13 How. 363, 371, 14 L.Ed. 181 (1852). See also *St. Louis, I.M. & S.R. Co. v. Williams*, 251 U.S. 63, 66-67, 40 S.Ct. 71, 73, 64 L.Ed. 139 (1919) (punitive award may not be "wholly disproportioned to the offense"); *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301, 109 S.Ct. 2909, 2934, 106 L.Ed.2d 219 (1989) (O'CONNOR, J., concurring in part and dissenting in part) (reviewing court "should examine the gravity of the defendant's conduct and the harshness of the award of **punitive damages**"). [FN24] This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that *576 "nonviolent crimes are less serious than crimes marked by violence or the threat of violence." *Solem v. Helm*, 463 U.S. 277, 292-293, 103 S.Ct. 3001, 3011, 77 L.Ed.2d 637 (1983). Similarly, "trickery and deceit," *TXO*, 509 U.S., at 462, 113 S.Ct., at 2722, are more reprehensible than negligence. In *TXO*, both the West Virginia Supreme Court and the Justices of this Court placed special emphasis on the principle that **punitive damages** may not be "grossly out of proportion to the severity of the offense." [FN25] *Id.*, at 453, 482, 113 S.Ct., at 2718,

2733. Indeed, for Justice KENNEDY, the defendant's intentional malice was the decisive element in a "close and difficult" case. *Id.*, at 468, 113 S.Ct., at 2725. [FN26]

FN23. "The flagrancy of the misconduct is thought to be the primary consideration in determining the amount of **punitive damages**."

Owen, A **Punitive Damages** Overview: Functions, Problems and Reform, 39 Vill. L.Rev. 363, 387 (1994).

FN24. The principle that punishment should fit the crime "is deeply rooted and frequently repeated in common-law jurisprudence." *Solem v. Helm*, 463 U.S. 277, 284, 103 S.Ct. 3001, 3006, 77 L.Ed.2d 637 (1983). See *Burkett v. Lanata*, 15 La. Ann. 337, 339 (1860) (**punitive damages** should be "commensurate to the nature of the offence"); *Blanchard v. Morris*, 15 Ill. 35, 36 (1853) ("[W]e cannot say [the exemplary damages] are excessive under the circumstances; for the proofs show that threats, violence, and imprisonment, were accompanied by mental fear, torture, and agony of mind"); *Louisville & Northern R. Co. v. Brown*, 127 Ky. 732, 749, 106 S.W. 795, 799 (1908) ("We are not aware of any case in which the court has sustained a verdict as large as this one unless the injuries were permanent").

FN25. *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 22, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991).

FN26. The dissenters also recognized that "TXO's conduct was clearly wrongful, calculated, and improper..." *TXO*, 509 U.S., at 482, 113 S.Ct., at 2733 (opinion of O'CONNOR, J.).

In this case, none of the aggravating factors associated with particularly reprehensible conduct is present. The harm **BMW** inflicted on Dr. Gore was purely economic in nature. The presale refinishing of the car had no effect on its performance or safety features, or even its appearance for at least nine months after his purchase. **BMW's** conduct evinced no indifference to or reckless disregard for the health and safety of others. To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, *id.*, at 453, 113 S.Ct., at 2717-2718, or when the target is financially vulnerable, can warrant a substantial penalty. But this

observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify a significant sanction in addition to compensatory damages.

Dr. Gore contends that **BMW's** conduct was particularly reprehensible because nondisclosure of the repairs to his car formed part of a nationwide pattern of tortious conduct. Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument *577 that strong medicine is required to cure the defendant's disrespect for the law. See *id.*, at 462, n. 28, 113 S.Ct., at 2722, n. 28. Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more **1600 reprehensible than an individual instance of malfeasance. See *Gryger v. Burke*, 334 U.S. 728, 732, 68 S.Ct. 1256, 1258-1259, 92 L.Ed. 1683 (1948).

In support of his thesis, Dr. Gore advances two arguments. First, he asserts that the state disclosure statutes supplement, rather than supplant, existing remedies for breach of contract and common-law fraud. Thus, according to Dr. Gore, the statutes may not properly be viewed as immunizing from liability the nondisclosure of repairs costing less than the applicable statutory threshold. Brief for Respondent 18-19. Second, Dr. Gore maintains that **BMW** should have anticipated that its failure to disclose similar repair work could expose it to liability for fraud. *Id.*, at 4-5.

[11] We recognize, of course, that only state courts may authoritatively construe state statutes. As far as we are aware, at the time this action was commenced no state court had explicitly addressed whether its State's disclosure statute provides a safe harbor for nondisclosure of presumptively minor repairs or should be construed instead as supplementing common-law duties. [FN27] A review of the text of the statutes, *578 however, persuades us that in the absence of a state-court determination to the contrary, a corporate executive could reasonably interpret the disclosure requirements as establishing safe harbors. In California, for example, the disclosure statute defines "material" damage to a motor vehicle as damage requiring repairs costing in excess of 3 percent of the suggested retail price or \$500, whichever is greater. Cal. Veh.Code Ann. § 9990 (West Supp.1996). The Illinois statute states that in cases in which disclosure is not required, "nondisclosure does not constitute a misrepresentation or omission of fact." Ill. Comp. Stat., ch. 815, § 710/5 (1994). [FN28] Perhaps the statutes may also be interpreted in another way. We simply emphasize that the

record contains no evidence that **BMW's** decision to follow a disclosure policy that coincided with the strictest extant state statute was sufficiently reprehensible to justify a \$2 million award of **punitive damages**.

FN27. In *Jeter v. M & M Dodge, Inc.*, 634 So.2d 1383 (La.App.1994), a Louisiana Court of Appeals suggested that the Louisiana disclosure statute functions as a safe harbor. Finding that the cost of repairing presale damage to the plaintiff's car exceeded the statutory disclosure threshold, the court held that the disclosure statute did not provide a defense to the action. *Id.*, at 1384.

During the pendency of this litigation, Alabama enacted a disclosure statute which defines "material" damage to a new car as damage requiring repairs costing in excess of 3 percent of suggested retail price or \$500, whichever is greater. Ala.Code § 8-19-5(22) (1993). After its decision in this case, the Alabama Supreme Court stated in dicta that the remedies available under this section of its Deceptive Trade Practices Act did not displace or alter pre-existing remedies available under either the common law or other statutes. *Hines v. Riverside Chevrolet-Olds, Inc.*, 655 So.2d 909, 917, n. 2 (1994). It refused, however, to "recognize, or impose on automobile manufacturers, a general duty to disclose every repair of damage, however slight, incurred during the manufacturing process." *Id.*, at 921. Instead, it held that whether a defendant has a duty to disclose is a question of fact "for the jury to determine." *Id.*, at 918. In reaching that conclusion it overruled two earlier decisions that seemed to indicate that as a matter of law there was no disclosure obligation in cases comparable to this one. *Id.*, at 920 (overruling *Century 21-Reeves Realty, Inc. v. McConnell Cadillac, Inc.*, 626 So.2d 1273 (1993), and *Cobb v. Southeast Toyota Distributors, Inc.*, 569 So.2d 395 (1990)).

FN28. See also Ariz.Rev.Stat. Ann. § 28-1304.03 (1989) ("[I]f disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale"); Ind.Code § 9-23-4-5 (1993) (providing that "[r]epaired damage to a customer-ordered new motor vehicle not exceeding four percent (4%) of the manufacturer's suggested retail price does not

need to be disclosed at the time of sale"); N.C. Gen.Stat. § 20-305.1(e) (1993) (requiring disclosure of repairs costing more than 5 percent of suggested retail price and prohibiting revocation or rescission of sales contract on the basis of less costly repairs); Okla. Stat., Tit. 47, § 1112.1 (1991) (defining "material" damage to a car as damage requiring repairs costing in excess of 3 percent of suggested retail price or \$500, whichever is greater).

*579 Dr. Gore's second argument for treating **BMW** as a recidivist is that the company should have anticipated that its actions would be considered fraudulent in some, if not all, jurisdictions. This contention overlooks the fact that actionable fraud requires a *material* **1601 misrepresentation or omission. [FN29] This qualifier invites line-drawing of just the sort engaged in by States with disclosure statutes and by **BMW**. We do not think it can be disputed that there may exist minor imperfections in the finish of a new car that can be repaired (or indeed, left unrepaired) without materially affecting the car's value. [FN30] There is no evidence that **BMW** acted in bad faith when it sought to establish the appropriate line between presumptively minor damage and damage requiring disclosure to purchasers. For this purpose, **BMW** could reasonably rely on state disclosure statutes for guidance. In this regard, it is also significant that there is no evidence that **BMW** persisted in a course of conduct after it had been adjudged unlawful on even one occasion, let alone repeated occasions. [FN31]

FN29. Restatement (Second) of Torts § 538 (1977); W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 108 (5th ed.1984).

FN30. The Alabama Supreme Court has held that a car may be considered "new" as a matter of law even if its finish contains minor cosmetic flaws. *Wilburn v. Larry Savage Chevrolet, Inc.*, 477 So.2d 384 (1985). We note also that at trial respondent only introduced evidence of undisclosed paint damage to new cars repaired at a cost of \$300 or more. This decision suggests that respondent believed that the jury might consider some repairs too *de minimis* to warrant disclosure.

FN31. Before the verdict in this case, **BMW** had changed its policy with respect to Alabama and two other States. Five days after the jury award,

BMW altered its nationwide policy to one of full disclosure.

Finally, the record in this case discloses no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO*. *Haslip*, 499 U.S., at 5, 111 S.Ct., at 1036; *TXO*, 509 U.S., at 453, 113 S.Ct., at 2717-2718. We accept, of course, the jury's finding that **BMW** suppressed *580 a material fact which Alabama law obligated it to communicate to prospective purchasers of repainted cars in that State. But the omission of a material fact may be less reprehensible than a deliberate false statement, particularly when there is a good-faith basis for believing that no duty to disclose exists.

[12] That conduct is sufficiently reprehensible to give rise to tort liability, and even a modest award of exemplary damages does not establish the high degree of culpability that warrants a substantial **punitive damages** award. Because this case exhibits none of the circumstances ordinarily associated with egregiously improper conduct, we are persuaded that **BMW's** conduct was not sufficiently reprehensible to warrant imposition of a \$2 million exemplary damages award.

Ratio

The second and perhaps most commonly cited indicium of an unreasonable or excessive **punitive damages** award is its ratio to the actual harm inflicted on the plaintiff. See *TXO*, 509 U.S., at 459, 113 S.Ct., at 2721; *Haslip*, 499 U.S., at 23, 111 S.Ct., at 1046. The principle that exemplary damages must bear a "reasonable relationship" to compensatory damages has a long pedigree. [FN32] Scholars have identified a number of early English statutes authorizing the *581 award of multiple damages for particular wrongs. Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages. [FN33] Our **1602 decisions in both *Haslip* and *TXO* endorsed the proposition that a comparison between the compensatory award and the punitive award is significant.

FN32. See, e.g., *Grant v. McDonogh*, 7 La. Ann. 447, 448 (1852) ("[E]xemplary damages allowed should bear some proportion to the real damage sustained"); *Saunders v. Mullen*, 66 Iowa 728, 729, 24 N.W. 529 (1885) ("When the actual damages are so small, the amount allowed as exemplary damages should not be so large"); *Flannery v. Baltimore & Ohio R. Co.*, 15 D.C.

111, 125 (1885) (when **punitive damages** award "is out of all proportion to the injuries received, we feel it our duty to interfere"); *Houston & Texas Central R. Co. v. Nichols*, 9 Am. & Eng. R.R. Cas. 361, 365 (Tex.1882) ("Exemplary damages, when allowed, should bear proportion to the actual damages sustained"); *McCarthy v. Niskern*, 22 Minn. 90, 91-92 (1875) (**punitive damages** "enormously in excess of what may justly be regarded as compensation" for the injury must be set aside "to prevent injustice").

FN33. Owen, *supra* n. 23, at 368, and n. 23. One English statute, for example, provides that officers arresting persons out of their jurisdiction shall pay double damages. 3 Edw., I., ch. 35. Another directs that in an action for forcible entry or detainer, the plaintiff shall recover treble damages. 8 Hen. VI, ch. 9, § 6. Present-day federal law allows or mandates imposition of multiple damages for a wide assortment of offenses, including violations of the antitrust laws, see § 4 of the Clayton Act, 38 Stat. 731, as amended, 15 U.S.C. § 15, and the Racketeer Influenced and Corrupt Organizations Act, see 18 U.S.C. § 1964, and certain breaches of the trademark laws, see § 35 of the Trademark Act of 1946, 60 Stat. 439, as amended, 15 U.S.C. § 1117, and the patent laws, see 35 U.S.C. § 284.

In *Haslip* we concluded that even though a **punitive damages** award of "more than 4 times the amount of compensatory damages" might be "close to the line," it did not "cross the line into the area of constitutional impropriety." 499 U.S., at 23-24, 111 S.Ct., at 1046. *TXO*, following dicta in *Haslip*, refined this analysis by confirming that the proper inquiry is "whether there is a reasonable relationship between the **punitive damages** award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred." *TXO*, 509 U.S., at 460, 113 S.Ct., at 2721 (emphasis in original), quoting *Haslip*, 499 U.S., at 21, 111 S.Ct., at 1045. Thus, in upholding the \$10 million award in *TXO*, we relied on the difference between that figure and the harm to the victim that would have ensued if the tortious plan had succeeded. That difference suggested that the relevant ratio was not more than 10 to 1. [FN34]

FN34. "While petitioner stresses the shocking disparity between the punitive award and the compensatory award, that shock dissipates when

one considers the potential loss to respondents, in terms of reduced or eliminated royalties payments, had petitioner succeeded in its illicit scheme. Thus, even if the actual value of the 'potential harm' to respondents is not between \$5 million and \$8.3 million, but is closer to \$4 million, or \$2 million, or even \$1 million, the disparity between the punitive award and the potential harm does not, in our view, 'jar one's constitutional sensibilities.' " *TXO*, 509 U.S., at 462, 113 S.Ct., at 2722, quoting *Haslip*, 499 U.S., at 18, 111 S.Ct., at 1043.

*582 The \$2 million in **punitive damages** awarded to Dr. Gore by the Alabama Supreme Court is 500 times the amount of his actual harm as determined by the jury. [FN35] Moreover, there is no suggestion that Dr. Gore or any other **BMW** purchaser was threatened with any additional potential harm by **BMW's** nondisclosure policy. The disparity in this case is thus dramatically greater than those considered in *Haslip* and *TXO*. [FN36]

FN35. Even assuming each repainted **BMW** suffers a diminution in value of approximately \$4,000, the award is 35 times greater than the total damages of all 14 Alabama consumers who purchased repainted **BMW's**.

FN36. The ratio here is also dramatically greater than any award that would be permissible under the statutes and proposed statutes summarized in the appendix to Justice GINSBURG's dissenting opinion. *Post*, at 1618- 1620.

[13] Of course, we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award. *TXO*, 509 U.S., at 458, 113 S.Ct., at 2720. [FN37] Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach. Once again, "we return to what we said ... in *Haslip*: 'We need not, and *583 indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of

reasonableness ... properly enter[s] into the constitutional calculus.'" *Id.*, at 458, 113 S.Ct., at 2720 (quoting *Haslip*, 499 U.S., at **1603 18, 111 S.Ct., at 1043). In most cases, the ratio will be within a constitutionally acceptable range, and remittitur will not be justified on this basis. When the ratio is a breathtaking 500 to 1, however, the award must surely "raise a suspicious judicial eyebrow." *TXO*, 509 U.S., at 481, 113 S.Ct., at 2732 (O'CONNOR, J., dissenting).

FN37. Conceivably the Alabama Supreme Court's selection of a 500-to-1 ratio was an application of Justice SCALIA's identification of one possible reading of the plurality opinion in *TXO*: Any future due process challenge to a **punitive damages** award could be disposed of with the simple observation that "this is no worse than *TXO*." 509 U.S., at 472, 113 S.Ct., at 2727 (SCALIA, J., concurring in judgment). As we explain in the text, this award is significantly worse than the award in *TXO*.

Sanctions for Comparable Misconduct

[14] Comparing the **punitive damages** award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. As Justice O'CONNOR has correctly observed, a reviewing court engaged in determining whether an award of **punitive damages** is excessive should "accord 'substantial deference' to legislative judgments concerning appropriate sanctions for the conduct at issue." *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S., at 301, 109 S.Ct., at 2934 (opinion concurring in part and dissenting in part). In *Haslip*, 499 U.S., at 23, 111 S.Ct., at 1046, the Court noted that although the exemplary award was "much in excess of the fine that could be imposed," imprisonment was also authorized in the criminal context. [FN38] In this *584 case the \$2 million economic sanction imposed on **BMW** is substantially greater than the statutory fines available in Alabama and elsewhere for similar malfeasance.

FN38. Although the Court did not address the size of the **punitive damages** award in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 104 S.Ct. 615, 78 L.Ed.2d 443 (1984), the dissenters commented on its excessive character, noting that the "\$10 million [**punitive damages** award] that the jury imposed is 100 times greater than the maximum fine that may be imposed ... for a

single violation of federal standards" and "more than 10 times greater than the largest single fine that the Commission has ever imposed." *Id.*, at 263, 104 S.Ct., at 629 (BLACKMUN, J., dissenting). In *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), the Court observed that the punitive award for libel was "one thousand times greater than the maximum fine provided by the Alabama criminal statute," and concluded that the "fear of damage awards under a rule such as that invoked by the Alabama courts here may be markedly more inhibiting than the fear of prosecution under a criminal statute." *Id.*, at 277, 84 S.Ct., at 724.

The maximum civil penalty authorized by the Alabama Legislature for a violation of its Deceptive Trade Practices Act is \$2,000; [FN39] other States authorize more severe sanctions, with the maxima ranging from \$5,000 to \$10,000. [FN40] Significantly, some statutes draw a distinction between first offenders and recidivists; thus, in New York the penalty is \$50 for a first offense and \$250 for subsequent offenses. None of these statutes would provide an out-of-state distributor with fair notice that the first violation-- or, indeed the first 14 violations--of its provisions might subject an offender to a multimillion dollar penalty. Moreover, at the time **BMW's** policy was first challenged, there does not appear to have been any judicial decision in Alabama or elsewhere indicating that application of that policy might give rise to such severe punishment.

FN39. Ala.Code § 8-19-11(b) (1993).

FN40. See, e.g., Ark.Code Ann. § 23-112-309(b) (1992) (up to \$5,000 for violation of state Motor Vehicle Commission Act that would allow suspension of dealer's license; up to \$10,000 for violation of Act that would allow revocation of dealer's license); Fla. Stat. § 320.27(12) (1992) (up to \$1,000); Ga.Code Ann. §§ 40-1-5(g), 10-1-397(a) (1994 and Supp.1996) (up to \$2,000 administratively; up to \$5,000 in superior court); Ind.Code § 9-23-6-4 (1993) (\$50 to \$1,000); N.H.Rev.Stat. Ann. §§ 357-C:15, 651:2 (1995 and Supp.1995) (corporate fine of up to \$20,000); N.Y. Gen. Bus. Law § 396-p(6) (McKinney Supp.1995) (\$50 for first offense; \$250 for subsequent offenses).

The sanction imposed in this case cannot be justified on the ground that it was necessary to deter future misconduct

without considering whether less drastic remedies could be expected to achieve that goal. The fact that a multimillion dollar penalty prompted a change in policy sheds no light on the question whether a lesser deterrent would have adequately protected the interests of Alabama consumers.

In *585 the absence of a history of noncompliance with known statutory requirements, there is no basis for assuming that a more modest sanction would not have been sufficient to motivate full compliance with the disclosure requirement imposed **1604 by the Alabama Supreme Court in this case.

IV

We assume, as the juries in this case and in the *Yates* case found, that the undisclosed damage to the new **BMW's** affected their actual value. Notwithstanding the evidence adduced by **BMW** in an effort to prove that the repainted cars conformed to the same quality standards as its other cars, we also assume that it knew, or should have known, that as time passed the repainted cars would lose their attractive appearance more rapidly than other **BMW's**. Moreover, we of course accept the Alabama courts' view that the state interest in protecting its citizens from deceptive trade practices justifies a sanction in addition to the recovery of compensatory damages. We cannot, however, accept the conclusion of the Alabama Supreme Court that **BMW's** conduct was sufficiently egregious to justify a punitive sanction that is tantamount to a severe criminal penalty.

[15][16] The fact that **BMW** is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business. Indeed, its status as an active participant in the national economy implicates the federal interest in preventing individual States from imposing undue burdens on interstate commerce. While each State has ample power to protect its own consumers, none may use the **punitive damages** deterrent as a means of imposing its regulatory policies on the entire Nation.

As in *Haslip*, we are not prepared to draw a bright line marking the limits of a constitutionally acceptable **punitive damages** award. Unlike that case, however, we are fully convinced that the grossly excessive award imposed in this *586 case transcends the constitutional limit. [FN41] Whether the appropriate remedy requires a new trial or merely an independent determination by the Alabama Supreme Court of the award necessary to vindicate the economic interests of Alabama consumers is a matter that should be addressed by the state court in the

first instance.

FN41. Justice GINSBURG expresses concern that we are "the *only* federal court policing" this limit. *Post*, at 1617. The small number of **punitive damages** questions that we have reviewed in recent years, together with the fact that this is the first case in decades in which we have found that a **punitive damages** award exceeds the constitutional limit, indicates that this concern is at best premature. In any event, this consideration surely does not justify an abdication of our responsibility to enforce constitutional protections in an extraordinary case such as this one.

The judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BREYER, with whom Justice O'CONNOR and Justice SOUTER join, concurring.

The Alabama state courts have assessed the defendant \$2 million in "**punitive damages**" for having knowingly failed to tell a **BMW** automobile buyer that, at a cost of \$600, it had repainted portions of his new \$40,000 car, thereby lowering its potential resale value by about 10%.

The Court's opinion, which I join, explains why we have concluded that this award, in this case, was "grossly excessive" in relation to legitimate **punitive damages** objectives, and hence an arbitrary deprivation of life, liberty, or property in violation of the Due Process Clause. See *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453, 454, 113 S.Ct. 2711, 2718, 125 L.Ed.2d 366 (1993) (A "grossly excessive" punitive award amounts to an "arbitrary deprivation of property without due process of law") (plurality opinion). Members of this Court have generally thought, however, that if "fair procedures were followed, a judgment that is a product of that process is entitled to a strong presumption *587 of validity." *Id.*, at 457, 113 S.Ct., at 2720. See also *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 40-42, 111 S.Ct. 1032, 1054-1056, 113 L.Ed.2d 1 (1991) (KENNEDY, J., concurring in judgment). And the Court also has found that **punitive damages** procedures very similar to those followed here were not, by themselves, fundamentally unfair. *Id.*, at 15-24, 111 S.Ct., at 1041-1047. Thus, I believe it important to explain why this presumption of validity is overcome in this instance.

****1605** The reason flows from the Court's emphasis in *Haslip* upon the constitutional importance of legal standards that provide "reasonable constraints" within which "discretion is exercised," that assure "meaningful and adequate review by the trial court whenever a jury has fixed the **punitive damages**," and permit "appellate review [that] makes certain that the **punitive damages** are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." *Id.*, at 20-21, 111 S.Ct., at 1045. See also *id.*, at 18, 111 S.Ct., at 1043 ("[U]nlimited jury discretion--or unlimited judicial discretion for that matter--in the fixing of **punitive damages** may invite extreme results that jar one's constitutional sensibilities").

This constitutional concern, itself harkening back to the Magna Carta, arises out of the basic unfairness of depriving citizens of life, liberty, or property, through the application, not of law and legal processes, but of arbitrary coercion. *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986); *Dent v. West Virginia*, 129 U.S. 114, 123, 9 S.Ct. 231, 233-234, 32 L.Ed. 623 (1889). Requiring the application of law, rather than a decisionmaker's caprice, does more than simply provide citizens notice of what actions may subject them to punishment; it also helps to assure the uniform general treatment of similarly situated persons that is the essence of law itself. See *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 112, 69 S.Ct. 463, 466-467, 93 L.Ed. 533 (1949) (Jackson, J., concurring) ("[T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally").

***588** Legal standards need not be precise in order to satisfy this constitutional concern. See *Haslip, supra*, at 20, 111 S.Ct., at 1044 (comparing **punitive damages** standards to such legal standards as "reasonable care," "due diligence," and "best interests of the child") (internal quotation marks omitted). But they must offer some kind of constraint upon a jury or court's discretion, and thus protection against purely arbitrary behavior. The standards the Alabama courts applied here are vague and open ended to the point where they risk arbitrary results. In my view, although the vagueness of those standards does not, by itself, violate due process, see *Haslip, supra*, it does invite the kind of scrutiny the Court has given the particular verdict before us. See *id.*, at 18, 111 S.Ct., at 1043 ("[C]oncerns of ... adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus"); *TXO, supra*, at 475, 113 S.Ct.,

at 2729 ("[I]t cannot be denied that the lack of clear guidance heightens the risk that arbitrariness, passion, or bias will replace dispassionate deliberation as the basis for the jury's verdict") (O'CONNOR, J., dissenting). This is because the standards, as the Alabama Supreme Court authoritatively interpreted them here, provided no significant constraints or protection against arbitrary results.

First, the Alabama statute that permits **punitive damages** does not itself contain a standard that readily distinguishes between conduct warranting very small, and conduct warranting very large, **punitive damages** awards. That statute permits **punitive damages** in cases of "oppression, fraud, wantonness, or malice." Ala.Code § 6-11-20(a) (1993). But the statute goes on to define those terms broadly, to encompass far more than the egregious conduct that those terms, at first reading, might seem to imply. An intentional misrepresentation, made through a statement or silence, can easily amount to "fraud" sufficient to warrant **punitive damages**. See § 6-11-20(b)(1) ("Fraud" includes "intentional ... concealment of a material fact the concealing party had a ***589** duty to disclose, which was gross, *oppressive, or malicious* and committed with the intention ... of thereby depriving a person or entity of property") (emphasis added); § 6-11-20(b)(2) ("Malice" includes *any "wrongful act without just cause or excuse ... [w]ith an intent to injure the ... property of another"*) (emphasis added); § 6-11-20(b)(5) ("Oppression" includes "[s]ubjecting a person to ... unjust hardship in conscious disregard of that person's rights"). The statute thereby authorizes **punitive damages** for the most ****1606** serious kinds of misrepresentations, say, tricking the elderly out of their life savings, for much less serious conduct, such as the failure to disclose repainting a car, at issue here, and for a vast range of conduct in between.

Second, the Alabama courts, in this case, have applied the "factors" intended to constrain **punitive damages** awards in a way that belies that purpose. *Green Oil Co. v. Hornsby*, 539 So.2d 218 (Ala.1989), sets forth seven factors that appellate courts use to determine whether or not a jury award was "grossly excessive" and which, in principle, might make up for the lack of significant constraint in the statute. But, as the Alabama courts have authoritatively interpreted them, and as their application in this case illustrates, they impose little actual constraint.

(a) *Green Oil* requires that a **punitive damages** award "bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred." *Id.*, at 223. But this standard

does little to guide a determination of what counts as a "reasonable" relationship, as this case illustrates. The record evidence of past, present, or likely future harm consists of (a) \$4,000 of harm to Dr. Gore's **BMW**; (b) 13 other similar Alabama instances; and (c) references to about 1,000 similar instances in other States. The Alabama Supreme Court, disregarding **BMW's** failure to make relevant objection to the out-of-state instances at trial (as was the court's right), held that the last mentioned, out-of-state instances did *not* *590 count as relevant harm. It went on to find "a reasonable relationship" between the harm and the \$2 million **punitive damages** award *without "consider[ing] those acts that occurred in other jurisdictions.*" 646 So.2d 619, 628 (1994) (emphasis added). For reasons explored by the majority in greater depth, see *ante*, at 1598-1604, the relationship between this award and the underlying conduct seems well beyond the bounds of the "reasonable." To find a "reasonable relationship" between purely economic harm totaling \$56,000, without significant evidence of future repetition, and a punitive award of \$2 million is to empty the "reasonable relationship" test of meaningful content. As thus construed, it does not set forth a legal standard that could have significantly constrained the discretion of Alabama factfinders.

(b) *Green Oil*'s second factor is the "degree of reprehensibility" of the defendant's conduct. *Green Oil, supra*, at 223. Like the "reasonable relationship" test, this factor provides little guidance on how to relate culpability to the size of an award. The Alabama court, in considering this factor, found "reprehensible" that **BMW** followed a conscious policy of not disclosing repairs to new cars when the cost of repairs amounted to less than 3% of the car's value. Of course, *any* conscious policy of not disclosing a repair--where one knows the nondisclosure might cost the customer resale value--is "reprehensible" to *some* degree. But, for the reasons discussed by the majority, *ante*, at 1599-1601, I do not see how the Alabama courts could find conduct that (they assumed) caused \$56,000 of relevant economic harm *especially* or *unusually* reprehensible enough to warrant \$2 million in **punitive damages**, or a significant portion of that award. To find to the contrary, as the Alabama courts did, is not simply unreasonable; it is to make "reprehensibility" a concept without constraining force, *i.e.*, to deprive the concept of its constraining power to protect against serious and capricious deprivations.

*591 c) *Green Oil*'s third factor requires "**punitive damages**" to "remove the profit" of the illegal activity and "be in excess of the profit, so that the defendant

recognizes a loss." *Green Oil*, 539 So.2d, at 223. This factor has the ability to limit awards to a fixed, rational amount. But as applied, that concept's potential was not realized, for the court did not limit the award to anywhere near the \$56,000 in profits evidenced in the record. Given the record's description of the conduct and its prevalence, this factor could not justify much of the \$2 million award.

(d) *Green Oil*'s fourth factor is the "financial position" of the defendant. *Ibid*. Since a fixed dollar award will punish a poor person more than a wealthy one, one can understand the relevance of this factor to the State's **1607 interest in retribution (though not necessarily to its interest in deterrence, given the more distant relation between a defendant's wealth and its responses to economic incentives). See *TXO*, 509 U.S., at 462, and n. 28, 113 S.Ct., at 2722, and n. 28 (plurality opinion); *id.*, at 469, 113 S.Ct., at 2726 (KENNEDY, J., concurring in part and concurring in judgment); *Haslip*, 499 U.S., at 21-22, 111 S.Ct., at 1045; *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 300, 109 S.Ct. 2909, 2933, 106 L.Ed.2d 219 (1989) (O'CONNOR, J., concurring in part and dissenting in part). This factor, however, is not necessarily intended to act as a significant *constraint* on punitive awards. Rather, it provides an open-ended basis for inflating awards when the defendant is wealthy, as this case may illustrate. That does not make its use unlawful or inappropriate; it simply means that this factor cannot make up for the failure of other factors, such as "reprehensibility," to constrain significantly an award that purports to punish a defendant's conduct.

(e) *Green Oil*'s fifth factor is the "costs of litigation" and the State's desire "to encourage plaintiffs to bring wrongdoers to trial." 539 So.2d, at 223. This standard provides meaningful constraint to the extent that the enhancement it authorized is linked to a fixed, ascertainable amount approximating actual costs, even when defined generously to reflect *592 the contingent nature of plaintiffs' victories. But as this case shows, the factor cannot operate as a constraint when an award much in excess of costs is approved for other reasons. An additional aspect of the standard--the need to "encourage plaintiffs to bring wrongdoers to trial"--is a factor that does not constrain, but enhances, discretionary power--especially when unsupported by evidence of a *special* need to encourage litigation (which the Alabama courts here did not mention).

(f) *Green Oil*'s sixth factor is whether or not "criminal sanctions have been imposed on the defendant for his conduct." *Ibid*. This factor did not apply here.

(g) *Green Oil*'s seventh factor requires that "other civil actions" filed "against the same defendant, based on the same conduct," be considered in mitigation. *Id.*, at 224. That factor did not apply here.

Thus, the first, second, and third *Green Oil* factors, in principle, might sometimes act as constraints on arbitrary behavior. But as the Alabama courts interpreted those standards in this case, even taking those three factors together, they could not have significantly constrained the court system's ability to impose "grossly excessive" awards.

Third, the state courts neither referred to, nor made any effort to find, nor enunciated any other standard that either directly, or indirectly as background, might have supplied the constraining legal force that the statute and *Green Oil* standards (as interpreted here) lack. Dr. Gore did argue to the jury an economic theory based on the need to offset the totality of the harm that the defendant's conduct caused. Some theory of that general kind might have provided a significant constraint on arbitrary awards (at least where confined to the relevant harm-causing conduct, see *ante*, at 1596- 1598). Some economists, for example, have argued for a standard that would deter illegal activity causing solely economic harm through the use of **punitive damages** awards that, as a whole, would take from a wrongdoer the total cost of the ***593** harm caused. See, e.g., S. Shavell, *Economic Analysis of Accident Law* 162 (1987) ("If liability equals losses caused multiplied by ... the inverse of the probability of suit, injurers will act optimally under liability rules despite the chance that they will escape suit"); Cooter, **Punitive Damages** for Deterrence: When and How Much, 40 Ala. L.Rev. 1143, 1146-1148 (1989). My understanding of the intuitive essence of some of those theories, which I put in crude form (leaving out various qualifications), is that they could permit juries to calculate **punitive damages** by making a rough estimate of global harm, dividing that estimate by a similarly rough estimate of the number of successful lawsuits that would likely be brought, and adding generous attorney's fees and other costs. Smaller damages would not sufficiently discourage firms from engaging in the harmful conduct, while larger damages would "over-deter" by leading potential defendants ****1608** to spend more to prevent the activity that causes the economic harm, say, through employee training, than the cost of the harm itself.

See Galligan, *Augmented Awards: The Efficient Evolution of Punitive Damages*, 51 La. L.Rev. 3, 17-20, 28-30 (1990). Larger damages might also "double count" by including in the **punitive damages** award some of the compensatory, or **punitive, damages** that subsequent

plaintiffs would also recover.

The record before us, however, contains nothing suggesting that the Alabama Supreme Court, when determining the allowable award, applied *any* "economic" theory that might explain the \$2 million recovery. Cf. *Browning-Ferris, supra*, at 300, 109 S.Ct., at 2933 (noting that the Constitution "does not incorporate the views of the Law and Economics School," nor does it " 'require the States to subscribe to any particular economic theory' ") (O'CONNOR, J., concurring in part and dissenting in part) (quoting *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 92, 107 S.Ct. 1637, 1651, 95 L.Ed.2d 67 (1987)).

And courts properly tend to judge the rationality of judicial actions in terms of the reasons that were given, and the facts that were before the court, cf. *TXO, *594* 509 U.S., at 468, 113 S.Ct., at 2725 (KENNEDY, J., concurring in part and concurring in judgment), not those that might have been given on the basis of some conceivable set of facts (unlike the rationality of economic statutes enacted by legislatures subject to the public's control through the ballot box, see, e.g., *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211 (1993)). Therefore, reference to a constraining "economic" theory, which might have counseled more deferential review by this Court, is lacking in this case.

Fourth, I cannot find any community understanding or historic practice that this award might exemplify and which, therefore, would provide background standards constraining arbitrary behavior and excessive awards. A **punitive damages** award of \$2 million for intentional misrepresentation causing \$56,000 of harm is extraordinary by historical standards, and, as far as I am aware, finds no analogue until relatively recent times. *Amici* for Dr. Gore attempt to show that this is not true, pointing to various historical cases which, according to their calculations, represented roughly equivalent punitive awards for similarly culpable conduct. See Brief for James D.A. Boyle et al. as *Amici Curiae* 4-5 (hereinafter *Legal Historians' Brief*). Among others, they cite *Wilkes v. Wood*, Lofft 1, 98 Eng. Rep. 489 (C.P. 1763) (<<PoundsSterling>> 1,000 said to be equivalent of \$1.5 million, for warrantless search of papers); *Huckle v. Money*, 2 Wills. 205, 95 Eng. Rep. 768 (K.B.1763) (<<PoundsSterling>>>>> 300, said to be \$450,000, for 6-hour false imprisonment); *Hewlett v. Cruchley*, 5 Taunt. 277, 128 Eng. Rep. 696 (C.P. 1813) (<<PoundsSterling>>>2,000, said to be \$680,000, for malicious prosecution); *Merest v. Harvey*, 5 Taunt. 442, 128 Eng. Rep. 761 (C.P. 1814) (<<PoundsSterling>>500, said to be \$165,000, for poaching). But *amici* apparently

base their conversions on a mathematical assumption, namely, that inflation has progressed at a constant 3% rate of inflation. See Legal Historians' Brief 4. In fact, consistent, cumulative inflation is a modern phenomenon. See McCusker, How Much Is That in Real Money? A Historical Price Index for Use as a Deflator *595 of Money Values in the Economy of the United States, 101 Proceedings of American Antiquarian Society 297, 310, 323-332 (1992). Estimates based on historical rates of valuation, while highly approximate, suggest that the ancient extraordinary awards are small compared to the \$2 million here at issue, or other modern **punitive damages** figures. See Appendix to this opinion, *infra*, at 1609-1610, suggesting that the modern equivalent of the awards in the above cases is something like \$150,000, \$45,000, \$100,000, and \$25,000, respectively). And, as the majority opinion makes clear, the record contains nothing to suggest that the extraordinary size of the award in this case is explained by the extraordinary wrongfulness of the defendant's behavior, measured by historical or community standards, rather than arbitrariness or caprice.

Fifth, there are no other legislative enactments here that classify awards and impose quantitative limits that would significantly cabin the fairly unbounded discretion created by the absence of constraining legal standards. Cf., e.g., Tex. Civ. Prac. & Rem.Code **1609 Ann. § 41.008 (Supp.1996) (**punitive damages** generally limited to greater of double damages, or \$200,000, except cap does not apply to suits arising from certain serious criminal acts enumerated in the statute); Conn. Gen.Stat. § 52-240b (1995) (**punitive damages** may not exceed double compensatory damages in product liability cases); Fla. Stat. § 768.73(1) (Supp.1993) (**punitive damages** in certain actions limited to treble compensatory damages); Ga.Code Ann. § 51-12-5.1(g) (Supp.1995) (\$250,000 cap in certain actions).

The upshot is that the rules that purport to channel discretion in this kind of case, here did not do so in fact. That means that the award in this case was both (a) the product of a system of standards that did not significantly constrain a court's, and hence a jury's, discretion in making that award; and (b) grossly excessive in light of the State's legitimate **punitive damages** objectives.

*596 The first of these reasons has special importance where courts review a jury-determined **punitive damages** award. That is because one cannot expect to direct jurors like legislators through the ballot box; nor can one expect those jurors to interpret law like judges, who work within a discipline and hierarchical organization that normally

promotes roughly uniform interpretation and application of the law. Yet here Alabama expects jurors to act, at least a little, like legislators or judges, for it permits them, to a certain extent, to create public policy and to apply that policy, not to compensate a victim, but to achieve a policy-related objective outside the confines of the particular case.

To the extent that neither clear legal principles nor fairly obvious historical or community-based standards (defining, say, especially egregious behavior) significantly constrain **punitive damages** awards, is there not a substantial risk of outcomes so arbitrary that they become difficult to square with the Constitution's assurance, to every citizen, of the law's protection? The standards here, as authoritatively interpreted, in my view, make this threat real and not theoretical. And, in these unusual circumstances, where legal standards offer virtually no constraint, I believe that this lack of constraining standards warrants this Court's detailed examination of the award.

The second reason--the severe disproportionality between the award and the legitimate **punitive damages** objectives--reflects a judgment about a matter of degree. I recognize that it is often difficult to determine just when a punitive award exceeds an amount reasonably related to a State's legitimate interests, or when that excess is so great as to amount to a matter of constitutional concern. Yet whatever the difficulties of drawing a precise line, once we examine the award in this case, it is not difficult to say that this award lies on the line's far side. The severe lack of proportionality between the size of the award and the underlying **punitive damages** objectives shows that the award falls into the category *597 of "gross excessiveness" set forth in this Court's prior cases.

These two reasons *taken together* overcome what would otherwise amount to a "strong presumption of validity." *TXO*, 509 U.S., at 457, 113 S.Ct., at 2720. And, for those two reasons, I conclude that the award in this unusual case violates the basic guarantee of nonarbitrary governmental behavior that the Due Process Clause provides.

APPENDIX TO OPINION OF BREYER, J.

Although I recognize that all estimates of historic rates of inflation are subject to dispute, including, I assume, the sources below, those sources suggest that the value of the 18th and 19th century judgments cited by *amici* is much less than the figures *amici* arrived at under their presumption of a constant 3% rate of inflation.

In 1763, <<PoundsSterling>>1 (Eng.) was worth <<PoundsSterling>>1.73 Pennsylvania currency. See

U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Series Z-585, p. 1198 (Bicentennial ed.1975). For the period 1766- 1772, <<PoundsSterling>>1 (Penn.) was worth \$45.99 (U.S.1991). See McCusker, How Much Is That in Real Money? A Historical Price Index for Use as a Deflator of Money Values in the Economy of the United States, 101 American Antiquarian Society 297, 333 **1610 (1992). Thus, <<PoundsSterling>>1 (Eng.1763) is worth about \$79.56 (U.S.1991). Accounting for the 12% inflation of the U.S. dollar between 1991 and 1995 (when *amici* filed their brief), see Economic Indicators, 104th Cong., 2d Sess., p. 23 (Feb.1996), <<PoundsSterling>>1 (Eng.1763) is worth about \$89.11 (U.S.1995).

Calculated another way, <<PoundsSterling>>1 (Eng.1763) is worth about <<PoundsSterling>>>>>72.84 (Eng.1991). See McCusker, *supra*, at 312, 342, 350. And <<PoundsSterling>>1 (Eng.1991) is worth \$1.77 (U.S.1991). See 78 Fed. Reserve Bulletin A68 (Feb.1992). Thus, <<PoundsSterling>>1 (Eng.1763) amounts to about \$128.93 (U.S.1991). Again, accounting for inflation between 1991 and 1995, this amounts to about \$144.40 (U.S.1995).

Thus, the above sources suggest that the <<PoundsSterling>>1,000 award in *Wilkes* in 1763 roughly amounts to between \$89,110 and \$144,440 today, not \$1.5 million. And the <<PoundsSterling>>300 award in *Huckle* that same year would seem to be worth between \$26,733 and \$43,320 today, not \$450,000.

For the period of the *Hewlett* and *Merest* decisions, <<PoundsSterling>>1 (Eng.1813) is worth about <<PoundsSterling>>25.3 (Eng.1991). See McCusker, *supra*, at 344, 350. Using the 1991 exchange rate, <<PoundsSterling>>1 (Eng.1813) is worth about \$44.78 (U.S.1991). Accounting for inflation between 1991 and 1995, this amounts to about \$50.16 (U.S.1995).

*598 Thus, the <<PoundsSterling>>2,000 and <<PoundsSterling>>500 awards in *Hewlett* and *Merest* would seem to be closer to \$100,320 and \$25,080, respectively, than to *amici's* estimates of \$680,000 and \$165,000.

Justice SCALIA, with whom Justice THOMAS joins, dissenting.

Today we see the latest manifestation of this Court's recent and increasingly insistent "concern about **punitive damages** that 'run wild.' " *Pacific Mut. Life Ins. Co. v.*

Haslip, 499 U.S. 1, 18, 111 S.Ct. 1032, 1043, 113 L.Ed.2d 1 (1991). Since the Constitution does not make that concern any of our business, the Court's activities in this area are an unjustified incursion into the province of state governments.

In earlier cases that were the prelude to this decision, I set forth my view that a state trial procedure that commits the decision whether to impose **punitive damages**, and the amount, to the discretion of the jury, subject to some judicial review for "reasonableness," furnishes a defendant with all the process that is "due." See *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 470, 113 S.Ct. 2711, 2726, 125 L.Ed.2d 366 (1993) (SCALIA, J., concurring in judgment); *Haslip, supra*, at 25-28, 111 S.Ct., at 1046- 1049 (SCALIA, J., concurring in judgment); cf. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 435-436, 114 S.Ct. 2331, 2342, 129 L.Ed.2d 336 (1994) (SCALIA, J., concurring). I do not regard the Fourteenth Amendment's Due Process Clause as a secret repository of substantive guarantees against *599 "unfairness"--neither the unfairness of an excessive civil compensatory award, nor the unfairness of an "unreasonable" punitive award. What the Fourteenth Amendment's procedural guarantee assures is an opportunity to contest the reasonableness of a damages judgment in state court; but there is no federal guarantee a damages award actually *be* reasonable. See *TXO, supra*, at 471, 113 S.Ct., at 2727 (SCALIA, J., concurring in judgment).

This view, which adheres to the text of the Due Process Clause, has not prevailed in our **punitive damages** cases. See *TPXO*, 509 U.S., at 453-462, 113 S.Ct., at 2718-2723 (plurality opinion); *id.*, at 478-481, 113 S.Ct., at 2730-2732 (O'CONNOR, J., dissenting); *Haslip, supra*, at 18, 111 S.Ct., at 1043. When, however, a constitutional doctrine adopted by the Court is not only mistaken but also unsusceptible of principled application, I do not feel bound to give it *stare decisis* effect--indeed, I do not feel justified in doing so. See, e.g., *Witte v. United States*, 515 U.S. 389, 406, 115 S.Ct. 2199, 2209, 132 L.Ed.2d 351 (1995) (SCALIA, J., concurring in judgment); *Walton v. Arizona*, 497 U.S. 639, 673, 110 S.Ct. 3047, 3067-3068, 111 L.Ed.2d 511 (1990) (SCALIA, J., concurring in judgment in part and dissenting in part). Our **punitive damages** jurisprudence compels such a response. The Constitution provides no warrant for federalizing yet another aspect of our Nation's legal culture (no matter **1611 how much in need of correction it may be), and the application of the Court's new rule of constitutional law is constrained by no principle other than the Justices' subjective assessment of the "reasonableness" of the award

in relation to the conduct for which it was assessed.

Because today's judgment represents the first instance of this Court's invalidation of a state-court punitive assessment as simply unreasonably large, I think it a proper occasion to discuss these points at some length.

I

The most significant aspects of today's decision--the identification of a "substantive due process" right against a "grossly excessive" award, and the concomitant assumption *600 of ultimate authority to decide anew a matter of "reasonableness" resolved in lower court proceedings--are of course not new. *Haslip* and *TXO* revived the notion, moribund since its appearance in the first years of this century, that the measure of civil punishment poses a question of constitutional dimension to be answered by this Court. Neither of those cases, however, nor any of the precedents upon which they relied, actually took the step of declaring a punitive award unconstitutional simply because it was "too big."

At the time of adoption of the Fourteenth Amendment, it was well understood that **punitive damages** represent the assessment by the jury, as the voice of the community, of the measure of punishment the defendant deserved. See, e.g., *Barry v. Edmunds*, 116 U.S. 550, 565, 6 S.Ct. 501, 509, 29 L.Ed. 729 (1886); *Missouri Pacific R. Co. v. Humes*, 115 U.S. 512, 521, 6 S.Ct. 110, 113, 29 L.Ed. 463 (1885); *Day v. Woodworth*, 13 How. 363, 371, 14 L.Ed. 181 (1852). See generally *Haslip*, *supra*, at 25-27, 111 S.Ct., at 1047- 1048 (SCALIA, J., concurring in judgment). Today's decision, though dressed up as a legal opinion, is really no more than a disagreement with the community's sense of indignation or outrage expressed in the punitive award of the Alabama jury, as reduced by the State Supreme Court. It reflects not merely, as the concurrence candidly acknowledges, "a judgment about a matter of degree," *ante*, at 1609; but a judgment about the appropriate degree of indignation or outrage, which is hardly an analytical determination.

There is no precedential warrant for giving our judgment priority over the judgment of state courts and juries on this matter. The only support for the Court's position is to be found in a handful of errant federal cases, bunched within a few years of one other, which invented the notion that an unfairly severe civil sanction amounts to a violation of constitutional liberties. These were the decisions upon which the *TXO* plurality relied in pronouncing that the Due Process Clause "imposes substantive limits 'beyond which penalties may not go,' " 509 U.S., at 454, 113 S.Ct., at 2718 (quoting *Seaboard Air Line R. Co. v. Seegers*, 207

U.S. 73, 78, 28 S.Ct. 28, 30, 52 L.Ed. 108 (1907)); see also 509 U.S., *601 at 478-481, 113 S.Ct., at 2730-2732 (O'CONNOR, J., dissenting); *Haslip*, *supra*, 499 U.S., at 18, 111 S.Ct., at 1043. Although they are our precedents, they are themselves too shallowly rooted to justify the Court's recent undertaking. The only case relied upon in which the Court actually invalidated a civil sanction does not even support constitutional review for excessiveness, since it really concerned the validity, as a matter of *procedural* due process, of state legislation that imposed a significant penalty on a common carrier which lacked the means of determining the legality of its actions before the penalty was imposed. See *Southwestern Telegraph & Telephone Co. v. Danaher*, 238 U.S. 482, 489-491, 35 S.Ct. 886, 887-888, 59 L.Ed. 1419 (1915). The *amount* of the penalty was not a subject of independent scrutiny. As for the remaining cases, while the opinions do consider arguments that statutory penalties can, by reason of their excessiveness, violate due process, not a single one of these judgments invalidates a damages award. See *Seaboard*, *supra*, at 78-79, 28 S.Ct., at 30; *Waters-Pierce Oil Co. v. Texas (No. 1)*, 212 U.S. 86, 111-112, 29 S.Ct. 220, 227, 53 L.Ed. 417 (1909); *Standard Oil Co. of Ind. v. Missouri*, 224 U.S. 270, 286, 290, 32 S.Ct. 406, 411, 412, 56 L.Ed. 760 (1912); *St. Louis, I.M. & S.R. Co. v. Williams*, 251 U.S. **1612 63, 66-67, 40 S.Ct. 71, 73, 64 L.Ed. 139 (1919).

More importantly, this latter group of cases--which again are the *sole* precedential foundation put forward for the rule of constitutional law espoused by today's Court--simply fabricated the "substantive due process" right at issue. *Seaboard* assigned no precedent to its bald assertion that the Constitution imposes "limits beyond which penalties may not go," 207 U.S., at 78, 28 S.Ct., at 30. *Waters-Pierce* cited only *Coffey v. County of Harlan*, 204 U.S. 659, 27 S.Ct. 305, 51 L.Ed. 666 (1907), a case which inquired into the constitutionality of state *procedure*, *id.*, at 662-663, 27 S.Ct., at 305-306. *Standard Oil* simply cited *Waters-Pierce*, and *St. Louis, I.M. & S.R. Co.* offered in addition to these cases only *Collins v. Johnston*, 237 U.S. 502, 35 S.Ct. 649, 59 L.Ed. 1071 (1915), which said nothing to support the notion of a "substantive due process" right against excessive civil penalties, but to the contrary asserted that the prescribing and imposing of criminal punishment were "functions peculiarly belonging to the several States," *602 *id.*, at 509-510, 35 S.Ct., at 652-653. Thus, the only authority for the Court's position is simply not authoritative. These cases fall far short of what is needed to supplant this country's longstanding practice regarding exemplary awards, see, e.g., *Haslip*, 499 U.S., at 15-18, 111 S.Ct., at 1041-1043; *id.*, at 25-28, 111 S.Ct., at 1047-1048

(SCALIA, J., concurring in judgment).

II

One might understand the Court's eagerness to enter this field, rather than leave it with the state legislatures, if it had something useful to say. In fact, however, its opinion provides virtually no guidance to legislatures, and to state and federal courts, as to what a "constitutionally proper" level of **punitive damages** might be.

We are instructed at the outset of Part II of the Court's opinion--the beginning of its substantive analysis--that "the federal excessiveness inquiry ... begins with an identification of the state interests that a punitive award is designed to serve." *Ante*, at 1595. On first reading this, one is faced with the prospect that federal **punitive damages** law (the new field created by today's decision) will be beset by the sort of "interest analysis" that has laid waste the formerly comprehensible field of conflict of laws. The thought that each assessment of **punitive damages**, as to each offense, must be examined to determine the precise "state interests" pursued, is most unsettling. Moreover, if those "interests" are the most fundamental determinant of an award, one would think that due process would require the assessing jury to be *instructed* about them.

It appears, however (and I certainly hope), that all this is a false alarm. As Part II of the Court's opinion unfolds, it turns out to be directed, not to the question "How much punishment is too much?" but rather to the question "Which acts can be punished?" "Alabama does not have the power," the Court says, "to punish **BMW** for conduct that was lawful where it occurred and that had no impact on Alabama or its residents." *Ante*, at 1597. That may be true, though *603 only in the narrow sense that a person cannot be *held liable to be punished* on the basis of a lawful act. But if a person has been held subject to punishment because he committed an *unlawful* act, the *degree* of his punishment assuredly *can* be increased on the basis of any other conduct of his that displays his wickedness, unlawful or not. Criminal sentences can be computed, we have said, on the basis of "information concerning every aspect of a defendant's life," *Williams v. New York*, 337 U.S. 241, 250-252, 69 S.Ct. 1079, 1085, 93 L.Ed. 1337 (1949). The Court at one point seems to acknowledge this, observing that, although a sentencing court "[cannot] properly *punish* lawful conduct," it may in assessing the penalty "consider ... lawful conduct that bears on the defendant's character." *Ante*, at 1598, n. 19. That concession is quite incompatible, however, with the later assertion that, since "neither the jury nor the trial

court was presented with evidence that any of **BMW's** out-of-state conduct was unlawful," the Alabama Supreme Court "therefore properly eschewed reliance on **BMW's** out-of-state conduct, ... and based its remitted award solely on conduct that occurred within Alabama." *Ante*, at 1598.

Why could the Supreme Court of Alabama not consider lawful (but disreputable) conduct, both inside **1613 and outside Alabama, for the purpose of assessing just how bad an actor **BMW** was?

The Court follows up its statement that "Alabama does not have the power ... to punish **BMW** for conduct that was lawful where it occurred" with the statement: "Nor may Alabama impose sanctions on **BMW** in order to deter conduct that is lawful in other jurisdictions." *Ante*, at 1597-1598. The Court provides us no citation of authority to support this proposition--other than the barely analogous cases cited earlier in the opinion, see *ante*, at 1596- 1597---and I know of none.

These significant issues pronounced upon by the Court are not remotely presented for resolution in the present case. There is no basis for believing that Alabama has sought to control conduct elsewhere. The statutes at issue merely *604 permit civil juries to treat conduct such as petitioner's as fraud, and authorize an award of appropriate **punitive damages** in the event the fraud is found to be "gross, oppressive, or malicious," Ala.Code § 6-11-20(b)(1) (1993). To be sure, respondent did invite the jury to consider out-of-state conduct in its calculation of damages, but any increase in the jury's initial award based on that consideration is not a component of the remitted judgment before us. As the Court several times recognizes, in computing the amount of the remitted award the Alabama Supreme Court--whether it was constitutionally required to or not--"expressly disclaimed any reliance on acts that occurred in other jurisdictions." *Ante*, at 1595 (internal quotation marks omitted); see also *ante*, at 1598. [FN*] Thus, the only question presented by this case is whether that award, limited to petitioner's Alabama conduct and viewed in light of the factors identified as properly informing the inquiry, is excessive.

The Court's sweeping (and largely unsupported) statements regarding the relationship of punitive awards to lawful or unlawful out-of-state conduct are the purest dicta.

FN* The Alabama Supreme Court said:
"[W]e must conclude that the award of **punitive damages** was based in large part on conduct that happened in other jurisdictions.... Although evidence of similar acts in other jurisdictions is

admissible as to the issue of 'pattern and practice' of such acts, ... this jury could not use the number of similar acts that a defendant has committed in other jurisdictions as a multiplier when determining the *dollar amount* of a **punitive damages** award. Such evidence may not be considered in setting the size of the civil penalty, because neither the jury nor the trial court had evidence before it showing in which states the conduct was wrongful." 646 So.2d 619, 627 (1994).

III

In Part III of its opinion, the Court identifies "[t]hree guideposts" that lead it to the conclusion that the award in this case is excessive: degree of reprehensibility, ratio between punitive award and plaintiff's actual harm, and legislative *605 sanctions provided for comparable misconduct. *Ante*, at 1598-1604. The legal significance of these "guideposts" is nowhere explored, but their necessary effect is to establish federal standards governing the hitherto exclusively state law of damages. Apparently (though it is by no means clear) all three federal "guideposts" can be overridden if "necessary to deter future misconduct," *ante*, at 1603-1604--a loophole that will encourage state reviewing courts to uphold awards as necessary for the "adequat[e] protect[i]on" of state consumers, *ibid*. By effectively requiring state reviewing courts to concoct rationalizations--whether within the "guideposts" or through the loophole--to justify the intuitive punitive reactions of state juries, the Court accords neither category of institution the respect it deserves.

Of course it will not be easy for the States to comply with this new federal law of damages, no matter how willing they are to do so. In truth, the "guideposts" mark a road to nowhere; they provide no real guidance at all. As to "degree of reprehensibility" of the defendant's conduct, we learn that "'nonviolent crimes are less serious than crimes marked by violence or the threat of violence,'" *ante*, at 1599 (quoting *Solem v. Helm*, 463 U.S. 277, 292-293, 103 S.Ct. 3001, 3011, 77 L.Ed.2d 637 (1983)), and that "'trickery and deceit' " are "more reprehensible than negligence," *ante*, at 1599. As to the ratio of punitive to compensatory damages, we are told that a "'general concer[n] of reasonableness ... enter[s] into the constitutional **1614 calculus,'" *ante*, at 1602 (quoting *TXO*, 509 U.S., at 458, 113 S.Ct., at 2720)--though even "a breathtaking 500 to 1" will not necessarily do anything more than "raise a suspicious judicial eyebrow," *ante*, at 1603 (quoting *TXO, supra*, at 481, 113 S.Ct., at 2732 (O'CONNOR, J., dissenting), an opinion which, when

confronted with that "breathtaking" ratio, approved it). And as to legislative sanctions provided for comparable misconduct, they should be accorded "'substantial deference,'" *ante*, at 1603 (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301, 109 S.Ct. 2909, 2934, 106 L.Ed.2d 219 (1989) (O'CONNOR, J., concurring in part and dissenting *606 in part)). One expects the Court to conclude: "To thine own self be true."

These crisscrossing platitudes yield no real answers in no real cases. And it must be noted that the Court nowhere says that these three "guideposts" are the *only* guideposts; indeed, it makes very clear that they are not--explaining away the earlier opinions that do not really follow these "guideposts" on the basis of *additional* factors, thereby "reiterat[ing] our rejection of a categorical approach." *Ante*, at 1602. In other words, even these utter platitudes, if they should ever happen to produce an answer, may be overridden by other unnamed considerations. The Court has constructed a framework that does not genuinely constrain, that does not inform state legislatures and lower courts--that does nothing at all except confer an artificial air of doctrinal analysis upon its essentially ad hoc determination that this particular award of **punitive damages** was not "fair."

The Court distinguishes today's result from *Haslip* and *TXO* partly on the ground that "the record in this case discloses no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO*." *Ante*, at 1601. This seemingly rejects the findings necessarily made by the jury--that petitioner had committed a fraud that was "gross, oppressive, or malicious," Ala.Code § 6-11-20(b)(1) (1993). Perhaps that rejection is intentional; the Court does not say.

The relationship between judicial application of the new "guideposts" and jury findings poses a real problem for the Court, since as a matter of logic there is no more justification for ignoring the jury's determination as to *how* reprehensible petitioner's conduct was (*i.e.*, how much it deserves to be punished), than there is for ignoring its determination that it was reprehensible *at all* (*i.e.*, that the wrong was willful and **punitive damages** are therefore recoverable). That the issue has been framed in terms of a constitutional right against unreasonably *excessive* awards should not obscure *607 the fact that the logical and necessary consequence of the Court's approach is the recognition of a constitutional right against unreasonably *imposed* awards as well. The elevation of "fairness" in punishment to a principle of "substantive due process"

means that every punitive award unreasonably imposed is unconstitutional; such an award is by definition excessive, since it attaches a penalty to conduct undeserving of punishment. Indeed, if the Court is correct, it must be that every claim that a state jury's award of *compensatory* damages is "unreasonable" (because not supported by the evidence) amounts to an assertion of constitutional injury. See *TXO, supra*, at 471, 113 S.Ct., at 2727 (SCALIA, J. concurring in judgment). And the same would be true for determinations of liability. By today's logic, *every* dispute as to evidentiary sufficiency in a state civil suit poses a question of constitutional moment, subject to review in this Court. That is a stupefying proposition.

For the foregoing reasons, I respectfully dissent.

Justice GINSBURG, with whom THE CHIEF JUSTICE joins, dissenting.

The Court, I am convinced, unnecessarily and unwisely ventures into territory traditionally within the States' domain, and does so in the face of reform measures recently adopted or currently under consideration in legislative arenas. The Alabama Supreme Court, in this case, endeavored to follow this Court's prior instructions; and, more recently, Alabama's highest court has installed further ****1615** controls on awards of **punitive damages** (see *infra*, at 1617-1618, n. 6). I would therefore leave the state court's judgment undisturbed, and resist unnecessary intrusion into an area dominantly of state concern.

I

The respect due the Alabama Supreme Court requires that we strip from this case a false issue: No impermissible "extraterritoriality" infects the judgment before us; the excessiveness ***608** of the award is the sole issue genuinely presented. The Court ultimately so recognizes, see *ante*, at 1597-1598, but further clarification is in order.

Dr. Gore's experience was not unprecedented among customers who bought **BMW** vehicles sold as flawless and brand-new. In addition to his own encounter, Gore showed, through paint repair orders introduced at trial, that on 983 other occasions since 1983, **BMW** had shipped new vehicles to dealers without disclosing paint repairs costing at least \$300, Tr. 585-586; at least 14 of the repainted vehicles, the evidence also showed, were sold as new and undamaged to consumers in Alabama. 646 So.2d 619, 623 (Ala.1994). Sales nationwide, Alabama's Supreme Court said, were admissible "as to the issue of a 'pattern and practice' of such acts." *Id.*, at 627. There was "no error," the court reiterated, "in the admission of the

evidence that showed how pervasive the nondisclosure policy was and the intent behind **BMW** NA's adoption of it." *Id.*, at 628. That determination comports with this Court's expositions. See *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 462, and n. 28, 113 S.Ct. 2711, 2722, and n. 28, 125 L.Ed.2d 366 (1993) (characterizing as "well-settled" the admissibility of "evidence of [defendant's] alleged wrongdoing in other parts of the country" and of defendant's "wealth"); see also Brief for Petitioner 22 (recognizing that similar acts, out-of-state, traditionally have been considered relevant "for the limited purpose of determining that the conduct before the [c]ourt was reprehensible because it was part of a pattern rather than an isolated incident").

Alabama's highest court next declared that the "jury could not use the number of similar acts that a defendant has committed in other jurisdictions as a multiplier when determining the *dollar amount* of a **punitive damages** award. Such evidence may not be considered in setting the size of the civil penalty, because neither the jury nor the trial court had evidence before it showing in which states the conduct was wrongful." ***609** 646 So.2d, at 627 (emphasis in original) (footnote omitted).

Because the Alabama Supreme Court provided this clear statement of the State's law, the multiplier problem encountered in Gore's case is not likely to occur again. Now, as a matter of Alabama law, it is plainly impermissible to assess **punitive damages** by multiplication based on out-of-state events not shown to be unlawful. See, e.g., *Independent Life and Accident Ins. Co. v. Harrington*, 658 So.2d 892, 902-903 (Ala.1994) (under *BMW v. Gore*, trial court erred in relying on defendant insurance company's out-of-state insurance policies in determining harm caused by defendant's unlawful actions).

No Alabama authority, it bears emphasis--no statute, judicial decision, or trial judge instruction--ever countenanced the jury's multiplication of the \$4,000 diminution in value estimated for each refinished car by the number of such cars (approximately 1,000) shown to have been sold nationwide. The sole prompt to the jury to use nationwide sales as a multiplier came from Gore's lawyer during summation. App. 31, Tr. 812-813. Notably, counsel for **BMW** failed to object to Gore's multiplication suggestion, even though **BMW's** counsel interrupted to make unrelated objections four other times during Gore's closing statement. Tr. 810-811, 854-855, 858, 870-871. Nor did **BMW's** counsel request a charge instructing the jury not to consider out-of-state sales in

calculating the **punitive damages** award. See Record 513-529 (listing all charges requested by counsel).

Following the verdict, **BMW's** counsel challenged the *admission* of the paint repair orders, but not, alternately, the jury's apparent use of the orders in a multiplication exercise. Curiously, during postverdict argument, **BMW's** counsel urged that if the ****1616** repair orders were indeed admissible, then Gore would have a "full right" to suggest a multiplier-based disgorgement. Tr. 932.

***610** In brief, Gore's case is idiosyncratic. The jury's improper multiplication, tardily featured by petitioner, is unlikely to recur in Alabama and does not call for error correction by this Court.

Because the jury apparently (and erroneously) had used acts in other States as a multiplier to arrive at a \$4 million sum for **punitive damages**, the Alabama Supreme Court itself determined " 'the maximum amount that a properly functioning jury could have awarded.' " 646 So.2d, at 630 (Houston, J., concurring specially) (quoting *Big B, Inc. v. Cottingham*, 634 So.2d 999, 1006 (Ala.1993)). The *per curiam* opinion emphasized that in arriving at \$2 million as "the amount of **punitive damages** to be awarded in this case, [the court did] not consider those acts that occurred in other jurisdictions." 646 So.2d, at 628 (emphasis in original). As this Court recognizes, the Alabama high court "properly eschewed reliance on **BMW's** out-of-state conduct and based its remitted award solely on conduct that occurred within Alabama." *Ante*, at 1598 (citation omitted). In sum, the Alabama Supreme Court left standing the jury's decision that the facts warranted an award of **punitive damages**--a determination not contested in this Court--and the state court concluded that, considering only acts in Alabama, \$2 million was "a constitutionally reasonable **punitive damages** award." 646 So.2d, at 629.

II A

Alabama's Supreme Court reports that it "thoroughly and painstakingly" reviewed the jury's award, *ibid.*, according to principles set out in its own pathmarking decisions and in this Court's opinions in *TXO* and *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 21, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991). 646 So.2d, at 621. The Alabama court said it gave weight to several factors, including **BMW's** deliberate ("reprehensible") presentation of refinished cars as new and undamaged, without disclosing that the value of those cars had been reduced by an estimated ***611** 10%,

[FN1] the financial position of the defendant, and the costs of litigation. *Id.*, at 625-626. These standards, we previously held, "impos[e] a sufficiently definite and meaningful constraint on the discretion of Alabama factfinders in awarding **punitive damages**." *Haslip*, 499 U.S., at 22, 111 S.Ct., at 1045; see also *TXO*, 509 U.S., at 462, n. 28, 113 S.Ct., at 2722, n. 28. Alabama's highest court could have displayed its labor pains more visibly, [FN2] but its judgment is nonetheless entitled to a presumption of legitimacy. See *Rowan v. Runnels*, 5 How. 134, 139, 12 L.Ed. 85 (1847) ("[T]his court will always feel itself bound to respect the decisions of the State courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws.").

FN1. According to trial testimony, in late May 1992, **BMW** began redirecting refinished cars out of Alabama and two other States. Tr. 964. The jury returned its verdict in favor of Gore on June 12, 1992. Five days later, **BMW** changed its national policy to one of full disclosure. *Id.*, at 1026.

FN2. See, e.g., Brief for Law and Economics Scholars et al. as *Amici Curiae* 6-28 (economic analysis demonstrates that Alabama Supreme Court's judgment was not unreasonable); W. Landes & R. Posner, *Economic Structure of Tort Law* 160-163 (1987) (economic model for assessing propriety of **punitive damages** in certain tort cases).

We accept, of course, that Alabama's Supreme Court applied the State's own law correctly. Under that law, the State's objectives--"punishment and deterrence"--guide **punitive damages** awards. See *Birmingham v. Benson*, 631 So.2d 902, 904 (Ala.1993). Nor should we be quick to find a constitutional infirmity when the highest state court endeavored a corrective for one counsel's slip and the other's oversight--counsel for plaintiff's excess in summation, unobjected to by counsel for defendant, see *supra*, at 1615--and when the state court did so intending to follow the process approved in our *Haslip* and *TXO* decisions.

B

The Court finds Alabama's \$2 million award not simply excessive, but grossly so, and therefore unconstitutional. ***612** The decision ****1617** leads us further into territory traditionally within the States' domain, [FN3] and commits the Court, now and again, to correct "misapplication of a

properly stated rule of law." But cf. this Court's Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). [FN4] The Court is not well equipped *613 for this mission. Tellingly, the Court repeats that it brings to the task no "mathematical formula," *ante*, at 1602, no "categorical approach," *ibid.*, no "bright line," *ante*, at 1604. It has only a vague concept of substantive due process, a "raised eyebrow" test, see *ante*, at 1603, as its ultimate guide. [FN5]

FN3. See *ante*, at 1595 ("In our federal system, States necessarily have considerable flexibility in determining the level of **punitive damages** that they will allow in different classes of cases and in any particular case."); *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 278, 109 S.Ct. 2909, 2921-2922, 106 L.Ed.2d 219 (1989) (In any "lawsuit where state law provides the basis of decision, the propriety of an award of **punitive damages** for the conduct in question, and the factors the jury may consider in determining their amount, are questions of state law."); *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 255, 104 S.Ct. 615, 625, 78 L.Ed.2d 443 (1984) ("**Punitive damages** have long been a part of traditional state tort law.").

FN4. Petitioner invites the Court to address the question of multiple **punitive damages** awards stemming from the same alleged misconduct. The Court does not take up the invitation, and rightly so, in my judgment, for this case does not present the issue. For three reasons, the question of multiple awards is hypothetical, not real, in Gore's case. First, the **punitive damages** award in favor of Gore is the only such award yet entered against **BMW** on account of its nondisclosure policy.

Second, **BMW** did not raise the issue of multiple punitives below. Indeed, in its reply brief before the Alabama Supreme Court, **BMW** stated: "Gore confuses our point about fairness among plaintiffs. He treats this point as a premature 'multiple **punitive damages**' argument. But, contrary to Gore's contention, we are not asking this Court to hold, as a matter of law, that a 'constitutional violation occurs when a defendant is subjected to **punitive damages** in two separate cases.'" Reply Brief for Appellant in Nos.

1920324, 1920325 (Ala.Sup.Ct.), p. 48 (internal citations omitted).

Third, if **BMW** had already suffered a **punitive damages** judgment in connection with its nondisclosure policy, Alabama's highest court presumably would have taken that fact into consideration. In reviewing **punitive damages** awards attacked as excessive, the Alabama Supreme Court considers whether "there have been other civil actions against the same defendant, based on the same conduct." 646 So.2d 619, 624 (1994) (quoting *Green Oil Co. v. Hornsby*, 539 So.2d 218, 224 (Ala.1989)). If so, "this should be taken into account in mitigation of the **punitive damages** award." 646 So.2d, at 624. The Alabama court accordingly observed that Gore's counsel had filed 24 other actions against **BMW** in Alabama and Georgia, but that no other **punitive damages** award had so far resulted. *Id.*, at 626.

FN5. Justice BREYER's concurring opinion offers nothing more solid. Under *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991), he acknowledges, Alabama's standards for **punitive damages**, standing alone, do not violate due process. *Ante*, at 1605. But they "invit[e] the kind of scrutiny the Court has given the particular verdict before us." *Ibid.* Pursuing that invitation, Justice BREYER concludes that, matching the particular facts of this case to Alabama's "legitimate **punitive damages** objectives," *ante*, at 1609, the award was " 'gross[ly] excessiv[e],'" *ibid.* The exercise is engaging, but ultimately tells us only this: too big will be judged unfair. What is the Court's measure of too big? Not a cap of the kind a legislature could order, or a mathematical test this Court can divine and impose. Too big is, in the end, the amount at which five Members of the Court bridle.

In contrast to habeas corpus review under 28 U.S.C. § 2254, the Court will work at this business alone. It will not be aided by the federal district courts and courts of appeals. It will be the *only* federal court policing the area. The Court's readiness to superintend state-court **punitive damages** awards is all the more puzzling in view of the Court's longstanding reluctance to countenance review, even by courts of appeals, of the size of verdicts returned by juries in federal district court proceedings. See generally 11 C. Wright, A. Miller, & M. Kane, Federal

Practice and Procedure § 2820 (2d ed.1995). And the reexamination prominent in state courts [FN6] and in legislative arenas, see Appendix, **1618 *614 *infra*, this page serves to underscore why the Court's enterprise is undue.

FN6. See, e.g., *Distinctive Printing and Packaging Co. v. Cox*, 232 Neb. 846, 857, 443 N.W.2d 566, 574 (1989) (*per curiam*) ("[P]unitive, vindictive, or exemplary damages contravene Neb. Const. art. VII, § 5, and thus are not allowed in this jurisdiction."); *Santana v. Registrars of Voters of Worcester*, 398 Mass. 862, 502 N.E.2d 132 (1986) (**punitive damages** are not permitted, unless expressly authorized by statute); *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wash.2d 826, 852, 726 P.2d 8, 23 (1986) (en banc) (same).

In *Life Ins. Co. of Georgia v. Johnson*, No. 1940357 (Nov. 17, 1995), the Alabama Supreme Court revised the State's regime for assessments of **punitive damages**. Henceforth, trials will be bifurcated. Initially, juries will be instructed to determine liability and the amount of compensatory damages, if any; also, the jury is to return a special verdict on the question whether a **punitive damages** award is warranted.

If the jury answers yes to the **punitive damages** question, the trial will be resumed for the presentation of evidence and instructions relevant to the amount appropriate to award as **punitive damages**.

After postverdict trial court review and subsequent appellate review, the amount of the final **punitive damages** judgment will be paid into the trial court. The trial court will then order payment of litigation expenses, including the plaintiff's attorney's fees, and instruct the clerk to divide the remainder equally between the plaintiff and the State General Fund. The provision for payment to the State General Fund is applicable to all judgments not yet satisfied, and therefore would apply to the judgment in *Gore's* case.

For the reasons stated, I dissent from this Court's disturbance of the judgment the Alabama Supreme Court has made.

APPENDIX TO DISSENTING OPINION OF
GINSBURG, J.
STATE LEGISLATIVE ACTIVITY REGARDING

PUNITIVE DAMAGES

State legislatures have in the hopper or have enacted a variety of measures to curtail awards of **punitive damages**. At least one state legislature has prohibited **punitive damages** altogether, unless explicitly provided by statute. See N.H.Rev.Stat. Ann. § 507:16 (1994). We set out in this appendix some of the several controls enacted or under consideration in the States. The measures surveyed are: (1) caps on awards; (2) provisions for payment of sums to state agencies rather than to plaintiffs; and (3) mandatory bifurcated trials with separate proceedings for **punitive damages** determinations.

*615 I. CAPS ON PUNITIVE DAMAGES AWARDS
. *Colorado*--Colo. Rev. Stat. §§ 13-21-102(1)(a) and (3) (1987) (as a main rule, caps **punitive damages** at amount of actual damages).

. *Connecticut*--Conn. Gen. Stat. § 52-240b (1995) (caps **punitive damages** at twice compensatory damages in products liability cases).

. *Delaware*--H. R. 237, 138th Gen. Ass. (introduced May 17, 1995) (would cap **punitive damages** at greater of three times compensatory damages, or \$250,000).

. *Florida*--Fla. Stat. §§ 768.73(1)(a) and (b) (Supp.1992) (in general, caps **punitive damages** at three times compensatory damages).

. *Georgia*--Ga. Code Ann. § 51-12-5.1 (Supp.1995) (caps **punitive damages** at \$250,000 in some tort actions; prohibits multiple awards stemming from the same predicate conduct in products liability actions).

. *Illinois*--H. 20, 89th Gen. Ass.1995-1996 Reg. Sess. (enacted Mar. 9, 1995) (caps **punitive damages** at three times economic damages).

. *Indiana*--H. 1741, 109th Reg. Sess. (enacted Apr. 26, 1995) (caps **punitive damages** at greater of three times compensatory damages, or \$50,000).

. *Kansas*--Kan.Stat. Ann. §§ 60-3701(e) and (f) (1994) (in general, caps **punitive damages** at lesser of defendant's annual gross income, or \$5 million).

. *Maryland*--S. 187, 1995 Leg. Sess. (introduced Jan. 27, 1995) (in general, would cap **punitive damages** at four times compensatory damages).

. *Minnesota*--S. 489, 79th Leg. Sess., 1995 Reg. Sess. (introduced Feb. 16, 1995) (would require reasonable relationship between compensatory and **punitive damages**).

. *Nevada*--Nev.Rev.Stat. § 42.005(1) (1993) (caps **punitive damages** at three times compensatory damages if compensatory damages equal \$100,000 or more, and at \$300,000 if the compensatory damages are less than \$100,000).

*616 . *New Jersey*--S. 1496, 206th Leg., 2d Ann. Sess. (1995) (caps **punitive damages** at greater of five times compensatory damages, or \$350,000, in certain tort cases).

. *North Dakota*--N. D. Cent. Code § 32-03.2-11(4) (Supp.1995) (caps **punitive damages** **1619 at greater of two times compensatory damages, or \$250,000).

. *Oklahoma*--Okla. Stat., Tit. 23, §§ 9.1(B)-(D) (Supp.1996) (caps **punitive damages** at greater of \$100,000, or actual damages, if jury finds defendant guilty of reckless disregard; and at greatest of \$500,000, twice actual damages, or the benefit accruing to defendant from the injury-causing conduct, if jury finds that defendant has acted intentionally and maliciously).

. *Texas*--S. 25, 74th Reg. Sess. (enacted Apr. 20, 1995) (caps **punitive damages** at twice economic damages, plus up to \$750,000 additional noneconomic damages).

. *Virginia*--Va. Code Ann. § 8.01-38.1 (1992) (caps **punitive damages** at \$350,000).

II. ALLOCATION OF **PUNITIVE DAMAGES** TO STATE AGENCIES

. *Arizona*--H. R. 2279, 42d Leg., 1st Reg. Sess. (introduced Jan. 12, 1995) (would allocate **punitive damages** to a victims' assistance fund, in specified circumstances).

. *Florida*--Fla. Stat. §§ 768.73(2)(a)-(b) (Supp.1992) (allocates 35% of **punitive damages** to General Revenue Fund or Public Medical Assistance Trust Fund); see *Gordon v. State*, 585 So.2d 1033, 1035-1038 (Fla.App.1991), *aff'd*, 608 So.2d 800 (Fla.1992) (upholding provision against due process challenge).

. *Georgia*--Ga. Code Ann. § 51-12-5.1(e)(2) (Supp.1995) (allocates 75% of **punitive damages**, less a proportionate part of litigation costs, including counsel fees, to state treasury); see *Mack Trucks, Inc. v. Conkle*, 263 Ga. 539,

540-543, 436 S.E.2d 635, 637-639 (Ga.1993) (upholding provision against constitutional challenge).

*617 . *Illinois*--Ill. Comp. Stat., ch., 735, § 5/2-1207 (1994) (permits court to apportion **punitive damages** among plaintiff, plaintiff's attorney, and Illinois Department of Rehabilitation Services).

. *Indiana*--H. 1741, 109th Reg. Sess. (enacted Apr. 26, 1995) (subject to statutory exceptions, allocates 75% of **punitive damages** to a compensation fund for violent crime victims).

. *Iowa*--Iowa Code § 668A.1(2)(b) (1987) (in described circumstances, allocates 75% of **punitive damages**, after payment of costs and counsel fees, to a civil reparations trust fund); see *Shepherd Components, Inc. v. Brice Petrides-Donohue & Assoc., Inc.*, 473 N.W.2d 612, 619 (Iowa 1991) (upholding provision against constitutional challenge).

. *Kansas*--Kan.Stat. Ann. § 60-3402(e) (1994) (allocates 50% of **punitive damages** in medical malpractice cases to state treasury).

. *Missouri*--Mo. Rev. Stat. § 537.675 (1994) (allocates 50% of **punitive damages**, after payment of expenses and counsel fees, to Tort Victims' Compensation Fund).

. *Montana*--H. 71, 54th Leg. Sess. (introduced Jan. 2, 1995) (would allocate 48% of **punitive damages** to state university system and 12% to school for the deaf and blind).

. *New Jersey*--S. 291, 206th Leg., 1994-1995 1st Reg. Sess. (introduced Jan. 18, 1994); A. 148, 206th Leg., 1994-1995 1st Reg. Sess. (introduced Jan. 11, 1994) (would allocate 75% of **punitive damages** to New Jersey Health Care Trust Fund).

. *New Mexico*--H. 1017, 42d Leg., 1st Sess. (introduced Feb. 16, 1995) (would allocate **punitive damages** to Low-Income Attorney Services Fund).

. *Oregon*--S. 482, 68th Leg. Ass. (enacted July 19, 1995) (amending Ore.Rev.Stat. §§ 18.540 and 30.925, and repealing Ore.Rev.Stat. § 41.315) (allocates 60% of **punitive damages** to Criminal Injuries Compensation Account).

*618 . *Utah*--Utah Code Ann. § 78-18-1(3) (1992) (allocates 50% of **punitive damages** in excess of \$20,000

to state treasury).

III. MANDATORY BIFURCATION OF LIABILITY AND PUNITIVE DAMAGES DETERMINATIONS

. *California*--Cal. Civ. Code Ann. § 3295(d) (West Supp.1995) (requires bifurcation, on application of defendant, of liability and damages phases of trials in which **punitive damages** are requested).

. *Delaware*--H. R. 237, 138th Gen. Ass. (introduced May 17, 1995) (would require, at **1620 request of any party, a separate proceeding for determination of **punitive damages**).

. *Georgia*--Ga. Code Ann. § 51-12-5.1(d) (Supp.1995) (in all cases in which **punitive damages** are claimed, liability for **punitive damages** is tried first, then amount of **punitive damages**).

. *Illinois*--H. 20, 89th Gen. Ass., 1995-1996 Reg. Sess. (enacted Mar. 9, 1995) (mandates, upon defendant's request, separate proceeding for determination of **punitive damages**).

. *Kansas*--Kan.Stat. Ann. §§ 60-3701(a) and (b) (1994) (trier of fact determines defendant's liability for **punitive damages**, then court determines amount of such damages).

. *Missouri*--Mo. Rev. Stat. §§ 510.263(1) and (3) (1994) (mandates bifurcated proceedings, on request of any party, for jury to determine first whether defendant is liable for **punitive damages**, then amount of **punitive damages**).

. *Montana*--Mont. Code Ann. § 27-1-221(7) (1995) (upon finding defendant liable for **punitive damages**, jury determines the amount in separate proceeding).

. *Nevada*--Nev.Rev.Stat. § 42.005(3) (1993) (if jury determines that **punitive damages** will be awarded, jury then determines amount in separate proceeding).

. *New Jersey*--N. J. Stat. Ann. §§ 2A:58C-5(b) and (d) (West 1987) (mandates separate proceedings for determination of compensatory and **punitive damages**).

*619 . *North Dakota*--N. D. Cent. Code § 32-03.2-11(2) (Supp.1995) (upon request of either party, trier of fact determines whether compensatory damages will be awarded before determining **punitive damages** liability and amount).

. *Oklahoma*--Okla. Stat., Tit. 23, §§ 9.1(B)-(D)

(Supp.1995-1996) (requires separate jury proceedings for **punitive damages**); S. 443, 45th Leg., 1st Reg. Sess. (introduced Jan. 31, 1995) (would require courts to strike requests for **punitive damages** before trial, unless plaintiff presents *prima facie* evidence at least 30 days before trial to sustain such damages; provide for bifurcated jury trial on request of defendant; and permit **punitive damages** only if compensatory damages are awarded).

. *Virginia*--H. 1070, 1994-1995 Reg. Sess. (introduced Jan. 25, 1994) (would require separate proceedings in which court determines that **punitive damages** are appropriate and trier of fact determines amount of **punitive damages**).

517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809, 64 USLW 4335, 96 Cal. Daily Op. Serv. 3490, 96 Daily Journal D.A.R. 5747

Supreme Court of the United States STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY v. CAMPBELL

538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003)

Justice KENNEDY delivered the opinion of the Court.

We address once again the measure of punishment, by means of **punitive damages**, a State may impose upon a defendant in a civil case. The question is whether, in the circumstances we shall recount, an award of \$145 million in **punitive damages**, where full compensatory damages are \$1 million, is excessive and in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

I

In 1981, Curtis Campbell (Campbell) was driving with his wife, Inez Preece Campbell, in Cache County, Utah. He decided to pass six vans traveling ahead of them on a two-lane highway. Todd Ospital was driving a small car approaching from the opposite direction. To avoid a head-on collision with Campbell, who by then was driving on the wrong side of the highway and toward oncoming traffic, Ospital swerved onto the shoulder, lost control of his automobile, and collided *413 with a vehicle driven by Robert G. Slusher. Ospital was killed, and Slusher was rendered permanently disabled. The Campbells escaped unscathed.

In the ensuing wrongful death and tort action, Campbell insisted he was not at fault. Early investigations did

support differing conclusions as to who caused the accident, but "a consensus was reached early on by the investigators and witnesses that Mr. Campbell's unsafe pass had indeed caused the crash." 65 P.3d 1134, **1518 1141 (Utah 2001). Campbell's insurance company, petitioner State Farm Mutual Automobile Insurance Company (State Farm), nonetheless decided to contest liability and declined offers by Slusher and Ospital's estate (Ospital) to settle the claims for the policy limit of \$50,000 (\$25,000 per claimant). State Farm also ignored the advice of one of its own investigators and took the case to trial, assuring the Campbells that "their assets were safe, that they had no liability for the accident, that [State Farm] would represent their interests, and that they did not need to procure separate counsel." *Id.*, at 1142. To the contrary, a jury determined that Campbell was 100 percent at fault, and a judgment was returned for \$185,849, far more than the amount offered in settlement.

At first State Farm refused to cover the \$135,849 in excess liability. Its counsel made this clear to the Campbells: "'You may want to put for sale signs on your property to get things moving.'" *Ibid.* Nor was State Farm willing to post a supersedeas bond to allow Campbell to appeal the judgment against him. Campbell obtained his own counsel to appeal the verdict. During the pendency of the appeal, in late 1984, Slusher, Ospital, and the Campbells reached an agreement whereby Slusher and Ospital agreed not to seek satisfaction of their claims against the Campbells. In exchange the Campbells agreed to pursue a bad faith action against State Farm and to be represented by Slusher's and Ospital's attorneys. The Campbells also agreed that Slusher and Ospital would have a right to play a part in all major decisions concerning *414 the bad-faith action. No settlement could be concluded without Slusher's and Ospital's approval, and Slusher and Ospital would receive 90 percent of any verdict against State Farm.

In 1989, the Utah Supreme Court denied Campbell's appeal in the wrongful-death and tort actions. *Slusher v. Ospital*, 777 P.2d 437 (Utah 1989). State Farm then paid the entire judgment, including the amounts in excess of the policy limits. The Campbells nonetheless filed a complaint against State Farm alleging bad faith, fraud, and intentional infliction of emotional distress. The trial court initially granted State Farm's motion for summary judgment because State Farm had paid the excess verdict, but that ruling was reversed on appeal. 840 P.2d 130 (Utah App.1992). On remand State Farm moved *in limine* to exclude evidence of alleged conduct that occurred in unrelated cases outside of Utah, but the trial court denied the motion. At State Farm's request the trial court

bifurcated the trial into two phases conducted before different juries. In the first phase the jury determined that State Farm's decision not to settle was unreasonable because there was a substantial likelihood of an excess verdict.

Before the second phase of the action against State Farm we decided *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and refused to sustain a \$2 million **punitive damages** award which accompanied a verdict of only \$4,000 in compensatory damages. Based on that decision, State Farm again moved for the exclusion of evidence of dissimilar out-of-state conduct. App. to Pet. for Cert. 168a-172a. The trial court denied State Farm's motion. *Id.*, at 189a.

The second phase addressed State Farm's liability for fraud and intentional infliction of emotional distress, as well as compensatory and **punitive damages**. The Utah Supreme Court aptly characterized this phase of the trial: "State Farm argued during phase II that its decision to take the case to trial was an 'honest mistake' that did *415 not warrant **punitive damages**. In contrast, the Campbells introduced evidence that State Farm's decision to take the case to trial was a result of a national scheme to meet corporate fiscal goals by capping payouts on claims company wide. This **1519 scheme was referred to as State Farm's 'Performance, Planning and Review,' or PP & R, policy. To prove the existence of this scheme, the trial court allowed the Campbells to introduce extensive expert testimony regarding fraudulent practices by State Farm in its nation-wide operations. Although State Farm moved prior to phase II of the trial for the exclusion of such evidence and continued to object to it at trial, the trial court ruled that such evidence was admissible to determine whether State Farm's conduct in the Campbell case was indeed intentional and sufficiently egregious to warrant **punitive damages**." 65 P.3d, at 1143.

Evidence pertaining to the PP & R policy concerned State Farm's business practices for over 20 years in numerous States. Most of these practices bore no relation to third-party automobile insurance claims, the type of claim underlying the Campbells' complaint against the company. The jury awarded the Campbells \$2.6 million in compensatory damages and \$145 million in **punitive damages**, which the trial court reduced to \$1 million and \$25 million respectively. Both parties appealed.

The Utah Supreme Court sought to apply the three guideposts we identified in *Gore, supra*, at 574-575, 116

S.Ct. 1589, and it reinstated the \$145 million **punitive damages** award. Relying in large part on the extensive evidence concerning the PP & R policy, the court concluded State Farm's conduct was reprehensible. The court also relied upon State Farm's "massive wealth" and on testimony indicating that "State Farm's actions, because of their clandestine nature, will be punished at most in one out of every 50,000 cases as a matter of statistical probability," 65 P.3d, at 1153, and concluded that the ratio *416 between punitive and compensatory damages was not unwarranted. Finally, the court noted that the **punitive damages** award was not excessive when compared to various civil and criminal penalties State Farm could have faced, including \$10,000 for each act of fraud, the suspension of its license to conduct business in Utah, the disgorgement of profits, and imprisonment. *Id.*, at 1154-1155. We granted certiorari. 535 U.S. 1111, 122 S.Ct. 2326, 153 L.Ed.2d 158 (2002).

II

[1][2] We recognized in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001), that in our judicial system compensatory and **punitive damages**, although usually awarded at the same time by the same decisionmaker, serve different purposes. *Id.*, at 432, 121 S.Ct. 1678. Compensatory damages "are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." *Ibid.* (citing Restatement (Second) of Torts § 903, pp. 453-454 (1979)). By contrast, **punitive damages** serve a broader function; they are aimed at deterrence and retribution. *Cooper Industries, supra*, at 432, 121 S.Ct. 1678; see also *Gore, supra*, at 568, 116 S.Ct. 1589 ("**Punitive damages** may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition"); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 19, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991) ("**Punitive damages** are imposed for purposes of retribution and deterrence").

[3][4][5] While States possess discretion over the imposition of **punitive damages**, it is well established that there are procedural and substantive constitutional limitations on these awards. *Cooper Industries, supra*; *Gore, supra*, at 559, 116 S.Ct. 1589; *Honda Motor Co. v. Oberg*, 512 U.S. 415, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994); *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993); *Haslip, supra*. The Due Process Clause of the Fourteenth Amendment prohibits the imposition of **1520 grossly excessive or arbitrary punishments on a tortfeasor.

Cooper Industries, supra, at 433, 121 S.Ct. 1678; *Gore*, 517 U.S., at 562, 116 S.Ct. 1589; see also *id.*, at 587, 116 S.Ct. 1589 (BREYER, J., concurring) ("This constitutional concern, itself *417 harkening back to the Magna Carta, arises out of the basic unfairness of depriving citizens of life, liberty, or property, through the application, not of law and legal processes, but of arbitrary coercion"). The reason is that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Id.*, at 574, 116 S.Ct. 1589; *Cooper Industries, supra*, at 433, 121 S.Ct. 1678 ("Despite the broad discretion that States possess with respect to the imposition of criminal penalties and **punitive damages**, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion"). To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property. *Haslip, supra*, at 42, 111 S.Ct. 1032 (O'CONNOR, J., dissenting) ("**Punitive damages** are a powerful weapon. Imposed wisely and with restraint, they have the potential to advance legitimate state interests. Imposed indiscriminately, however, they have a devastating potential for harm. Regrettably, common-law procedures for awarding **punitive damages** fall into the latter category").

Although these awards serve the same purposes as criminal penalties, defendants subjected to **punitive damages** in civil cases have not been accorded the protections applicable in a criminal proceeding. This increases our concerns over the imprecise manner in which **punitive damages** systems are administered. We have admonished that "[p]unitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." *Honda Motor, supra*, at 432, 114 S.Ct. 2331; see also *Haslip, supra*, at 59, 111 S.Ct. 1032 (O'CONNOR, J., dissenting) ("[T]he Due Process Clause *418 does not permit a State to classify arbitrariness as a virtue. Indeed, the point of due process--of the law in general--is to allow citizens to order their behavior. A State can have no legitimate interest in deliberately making the law so arbitrary that citizens will be unable to avoid punishment based solely upon bias or whim"). Our concerns are heightened when the decisionmaker is presented, as we shall discuss, with

evidence that has little bearing as to the amount of **punitive damages** that should be awarded. Vague instructions, or those that merely inform the jury to avoid "passion or prejudice," App. to Pet. for Cert. 108a-109a, do little to aid the decisionmaker in its task of assigning appropriate weight to evidence that is relevant and evidence that is tangential or only inflammatory.

[6] In light of these concerns, in *Gore, supra*, we instructed courts reviewing **punitive damages** to consider three guideposts: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the **punitive damages** award; and (3) the difference between the **punitive damages** awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.*, at 575, 116 S.Ct. 1589. We reiterated the importance of these three guideposts in *Cooper Industries* and mandated appellate courts to conduct *de novo* review of a trial court's application of them to the jury's award. 532 U.S. 424, 121 S.Ct. 1678. Exacting appellate review ensures that an award of **punitive damages** is based upon an "application of law, rather than a decisionmaker's ****1521** caprice." *Id.*, at 436, 121 S.Ct. 1678 (quoting *Gore, supra*, at 587, 116 S.Ct. 1589 (BREYER, J., concurring)).

III

[7] Under the principles outlined in *BMW of North America, Inc. v. Gore*, this case is neither close nor difficult. It was error to reinstate the jury's \$145 million **punitive damages** award. We address each guidepost of *Gore* in some detail.

*419 A

[8][9] "[T]he most important indicium of the reasonableness of a **punitive damages** award is the degree of reprehensibility of the defendant's conduct." *Gore*, 517 U.S., at 575, 116 S.Ct. 1589. We have instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Id.*, at 576-577, 116 S.Ct. 1589. The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a **punitive damages** award; and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so **punitive**

damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *Id.*, at 575, 116 S.Ct. 1589.

Applying these factors in the instant case, we must acknowledge that State Farm's handling of the claims against the Campbells merits no praise. The trial court found that State Farm's employees altered the company's records to make Campbell appear less culpable. State Farm disregarded the overwhelming likelihood of liability and the near-certain probability that, by taking the case to trial, a judgment in excess of the policy limits would be awarded. State Farm amplified the harm by at first assuring the Campbells their assets would be safe from any verdict and by later telling them, postjudgment, to put a for-sale sign on their house. While we do not suggest there was error in awarding **punitive damages** based upon State Farm's conduct toward the Campbells, a more modest punishment for this ***420** reprehensible conduct could have satisfied the State's legitimate objectives, and the Utah courts should have gone no further.

This case, instead, was used as a platform to expose, and punish, the perceived deficiencies of State Farm's operations throughout the country. The Utah Supreme Court's opinion makes explicit that State Farm was being condemned for its nationwide policies rather than for the conduct directed toward the Campbells. 65 P.3d, at 1143 ("[T]he Campbells introduced evidence that State Farm's decision to take the case to trial was a result of a national scheme to meet corporate fiscal goals by capping payouts on claims company wide"). This was, as well, an explicit rationale of the trial court's decision in approving the award, though reduced from \$145 million to \$25 million. App. to Pet. for Cert. 120a ("[T]he Campbells demonstrated, through the testimony of State Farm employees who had worked outside of Utah, and through expert testimony, that this pattern of claims adjustment under the PP & R program was not a local anomaly, but was a consistent, nationwide feature of State Farm's business operations, orchestrated from the highest levels of corporate management").

The Campbells contend that State Farm has only itself to blame for the reliance upon dissimilar and out-of-state conduct evidence. The record does not support ****1522** this contention. From their opening statements onward the Campbells framed this case as a chance to rebuke State Farm for its nationwide activities. App. 208 ("You're going to hear evidence that even the insurance commission in Utah and around the country are unwilling or inept at

protecting people against abuses"); *id.*, at 242 ("[T]his is a very important case.... [I]t transcends the Campbell file. It involves a nationwide practice. And you, here, are going to be evaluating and assessing, and hopefully requiring State Farm to stand accountable for what it's doing across the country, which is the purpose of **punitive damages**"). This was a position *421 maintained throughout the litigation. In opposing State Farm's motion to exclude such evidence under *Gore*, the Campbells' counsel convinced the trial court that there was no limitation on the scope of evidence that could be considered under our precedents. App. to Pet. for Cert. 172a ("As I read the case [*Gore*], I was struck with the fact that a clear message in the case ... seems to be that courts in **punitive damages** cases should receive more evidence, not less. And that the court seems to be inviting an even broader area of evidence than the current rulings of the court would indicate"); *id.*, at 189a (trial court ruling).

[10][11] A State cannot punish a defendant for conduct that may have been lawful where it occurred. *Gore, supra*, at 572, 116 S.Ct. 1589; *Bigelow v. Virginia*, 421 U.S. 809, 824, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975) ("A State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State"); *New York Life Ins. Co. v. Head*, 234 U.S. 149, 161, 34 S.Ct. 879, 58 L.Ed. 1259 (1914) ("[I]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State ... without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question and hence authorities directly dealing with it do not abound"); *Huntington v. Attrill*, 146 U.S. 657, 669, 13 S.Ct. 224, 36 L.Ed. 1123 (1892) ("Laws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extra-territorial effect only by the comity of other States"). Nor, as a general rule, does a State have a legitimate concern in imposing **punitive damages** to punish a defendant for unlawful acts committed outside of the State's jurisdiction. Any proper adjudication of conduct that occurred outside Utah to other persons would require their inclusion, and, to those parties, the Utah courts, in the usual case, would need *422 to apply the laws of their relevant jurisdiction. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821- 822, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985).

[12][13][14] Here, the Campbells do not dispute that much of the out-of-state conduct was lawful where it occurred. They argue, however, that such evidence was not the primary basis for the **punitive damages** award and was relevant to the extent it demonstrated, in a general sense, State Farm's motive against its insured. Brief for Respondents 46-47 ("[E]ven if the practices described by State Farm were not *malum in se* or *malum prohibitum*, they became relevant to **punitive damages** to the extent they were used as tools to implement State Farm's wrongful PP & R policy"). This argument misses the mark. Lawful out-of-state conduct may be probative when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious, but that conduct must have a nexus to the specific harm suffered by the plaintiff. A jury must be instructed, furthermore, that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction **1523 where it occurred. *Gore*, 517 U.S., at 572-573, 116 S.Ct. 1589 (noting that a State "does not have the power ... to punish [a defendant] for conduct that was lawful where it occurred and that had no impact on [the State] or its residents"). A basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction. *Id.*, at 569, 116 S.Ct. 1589 ("[T]he States need not, and in fact do not, provide such protection in a uniform manner").

[15] For a more fundamental reason, however, the Utah courts erred in relying upon this and other evidence: The courts awarded **punitive damages** to punish and deter conduct that bore no relation to the Campbells' harm. A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for **punitive damages**. *423 A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business. Due process does not permit courts, in the calculation of **punitive damages**, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis, but we have no doubt the Utah Supreme Court did that here. 65 P.3d, at 1149 ("Even if the harm to the Campbells can be appropriately characterized as minimal, the trial court's assessment of the situation is on target: 'The harm is minor to the individual but massive in the aggregate' "). Punishment on these bases creates the possibility of multiple **punitive damages** awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other

plaintiff obtains. *Gore, supra*, at 593, 116 S.Ct. 1589 (BREYER, J., concurring) ("Larger damages might also 'double count' by including in the **punitive damages** award some of the compensatory, or **punitive, damages** that subsequent plaintiffs would also recover").

[16] The same reasons lead us to conclude the Utah Supreme Court's decision cannot be justified on the grounds that State Farm was a recidivist. Although "[o]ur holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance," *Gore, supra*, at 577, 116 S.Ct. 1589, in the context of civil actions courts must ensure the conduct in question replicates the prior transgressions. *TXO*, 509 U.S., at 462, n. 28, 113 S.Ct. 2711 (noting that courts should look to " 'the existence and frequency of similar past conduct' " (quoting *Haslip*, 499 U.S., at 21-22, 111 S.Ct. 1032)).

The Campbells have identified scant evidence of repeated misconduct of the sort that injured them. Nor does our review of the Utah courts' decisions convince us that State Farm was only punished for its actions toward the Campbells. Although evidence of other acts need not be identical to have relevance in the calculation of **punitive damages**, the Utah court erred here because evidence pertaining to claims *424 that had nothing to do with a third-party lawsuit was introduced at length. Other evidence concerning reprehensibility was even more tangential. For example, the Utah Supreme Court criticized State Farm's investigation into the personal life of one of its employees and, in a broader approach, the manner in which State Farm's policies corrupted its employees. 65 P.3d, at 1148, 1150. The Campbells attempt to justify the courts' reliance upon this unrelated testimony on the theory that each dollar of profit made by underpaying a third-party claimant is the same as a dollar made by underpaying a first-party one. Brief for Respondents 45; see also 65 P.3d at 1150 ("State Farm's continuing illicit practice created market disadvantages for other honest insurance companies **1524 because these practices increased profits. As plaintiffs' expert witnesses established, such wrongfully obtained competitive advantages have the potential to pressure other companies to adopt similar fraudulent tactics, or to force them out of business. Thus, such actions cause distortions throughout the insurance market and ultimately hurt all consumers"). For the reasons already stated, this argument is unconvincing. The reprehensibility guidepost does not permit courts to expand the scope of the case so that a defendant may be punished for any malfeasance, which in

this case extended for a 20-year period. In this case, because the Campbells have shown no conduct by State Farm similar to that which harmed them, the conduct that harmed them is the only conduct relevant to the reprehensibility analysis.

B

Turning to the second *Gore* guidepost, we have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the **punitive damages** award. 517 U.S., at 582, 116 S.Ct. 1589 ("[W]e have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive *425 award"); *TXO, supra*, at 458, 113 S.Ct. 2711. We decline again to impose a bright-line ratio which a **punitive damages** award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In *Haslip*, in upholding a **punitive damages** award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. 499 U.S., at 23-24, 111 S.Ct. 1032. We cited that 4-to-1 ratio again in *Gore*. 517 U.S., at 581, 116 S.Ct. 1589. The Court further referenced a 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. *Id.*, at 581, and n. 33, 116 S.Ct. 1589. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1, *id.*, at 582, 116 S.Ct. 1589, or, in this case, of 145 to 1.

[17] Nonetheless, because there are no rigid benchmarks that a **punitive damages** award may not surpass, 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." *Ibid.*; see also *ibid.* (positing that a higher ratio *might* be necessary where "the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine"). The converse is also true, however. When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee. The precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff.

[18] *426 In sum, courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered. In the context of this case, we have no doubt that there is a presumption against an award that has a 145- to-1 ratio. The compensatory award in this case was substantial; the Campbells were awarded \$1 million for a year and a half of emotional distress. This was complete compensation. The harm arose from a transaction in the economic **1525 realm, not from some physical assault or trauma; there were no physical injuries; and State Farm paid the excess verdict before the complaint was filed, so the Campbells suffered only minor economic injuries for the 18-month period in which State Farm refused to resolve the claim against them. The compensatory damages for the injury suffered here, moreover, likely were based on a component which was duplicated in the punitive award. Much of the distress was caused by the outrage and humiliation the Campbells suffered at the actions of their insurer; and it is a major role of **punitive damages** to condemn such conduct. Compensatory damages, however, already contain this punitive element. See Restatement (Second) of Torts § 908, Comment *c*, p. 466 (1977) ("In many cases in which compensatory damages include an amount for emotional distress, such as humiliation or indignation aroused by the defendant's act, there is no clear line of demarcation between punishment and compensation and a verdict for a specified amount frequently includes elements of both").

The Utah Supreme Court sought to justify the massive award by pointing to State Farm's purported failure to report a prior \$100 million **punitive damages** award in Texas to its corporate headquarters; the fact that State Farm's policies have affected numerous Utah consumers; the fact that State Farm will only be punished in one out of every 50,000 cases as a matter of statistical probability; and State Farm's enormous wealth. 65 P.3d, at 1153. Since the Supreme *427 Court of Utah discussed the Texas award when applying the ratio guidepost, we discuss it here. The Texas award, however, should have been analyzed in the context of the reprehensibility guidepost only. The failure of the company to report the Texas award is out-of-state conduct that, if the conduct were similar, might have had some bearing on the degree of reprehensibility, subject to the limitations we have described. Here, it was dissimilar, and of such marginal relevance that it should have been accorded little or no weight. The award was rendered in a first-party lawsuit; no judgment was entered in the case; and it was later settled for a fraction of the verdict. With respect to the Utah Supreme Court's second justification, the Campbells' inability to direct us to testimony demonstrating harm to

the people of Utah (other than those directly involved in this case) indicates that the adverse effect on the State's general population was in fact minor.

[19] The remaining premises for the Utah Supreme Court's decision bear no relation to the award's reasonableness or proportionality to the harm. They are, rather, arguments that seek to defend a departure from well-established constraints on **punitive damages**. While States enjoy considerable discretion in deducing when **punitive damages** are warranted, each award must comport with the principles set forth in *Gore*. Here the argument that State Farm will be punished in only the rare case, coupled with reference to its assets (which, of course, are what other insured parties in Utah and other States must rely upon for payment of claims) had little to do with the actual harm sustained by the Campbells. The wealth of a defendant cannot justify an otherwise unconstitutional **punitive damages** award. *Gore*, 517 U.S., at 585, 116 S.Ct. 1589 ("The fact that **BMW** is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business"); see also *id.*, at 591, 116 S.Ct. 1589 (BREYER, J., concurring) ("[Wealth] provides an open-ended basis for *428 inflating awards when the defendant is wealthy That does not make its use unlawful or inappropriate; it simply means that this factor cannot make up for the failure of other factors, such as 'reprehensibility,' to constrain significantly an award that purports to punish a defendant's conduct"). The principles set forth in *Gore* **1526 must be implemented with care, to ensure both reasonableness and proportionality.

C

[20] The third guidepost in *Gore* is the disparity between the **punitive damages** award and the "civil penalties authorized or imposed in comparable cases." *Id.*, at 575, 116 S.Ct. 1589. We note that, in the past, we have also looked to criminal penalties that could be imposed. *Id.*, at 583, 116 S.Ct. 1589; *Haslip*, 499 U.S., at 23, 111 S.Ct. 1032. The existence of a criminal penalty does have bearing on the seriousness with which a State views the wrongful action. When used to determine the dollar amount of the award, however, the criminal penalty has less utility. Great care must be taken to avoid use of the civil process to assess criminal penalties that can be imposed only after the heightened protections of a criminal trial have been observed, including, of course, its higher standards of proof. **Punitive damages** are not a substitute for the criminal process, and the remote possibility of a criminal sanction does not automatically sustain a **punitive**

damages award.

Here, we need not dwell long on this guidepost. The most relevant civil sanction under Utah state law for the wrong done to the Campbells appears to be a \$10,000 fine for an act of fraud, 65 P.3d, at 1154, an amount dwarfed by the \$145 million **punitive damages** award. The Supreme Court of Utah speculated about the loss of State Farm's business license, the disgorgement of profits, and possible imprisonment, but here again its references were to the broad fraudulent scheme drawn from evidence of out-of-state and dissimilar conduct. This analysis was insufficient to justify the award.

***429 IV**

An application of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a **punitive damages** award at or near the amount of compensatory damages. The punitive award of \$145 million, therefore, was neither reasonable nor proportionate to the wrong committed, and it was an irrational and arbitrary deprivation of the property of the defendant. The proper calculation of **punitive damages** under the principles we have discussed should be resolved, in the first instance, by the Utah courts.

The judgment of the Utah Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice SCALIA, dissenting.

I adhere to the view expressed in my dissenting opinion in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 598-99, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), that the Due Process Clause provides no substantive protections against "excessive" or "unreasonable" awards of **punitive damages**. I am also of the view that the **punitive damages** jurisprudence which has sprung forth from *BMW v. Gore* is insusceptible of principled application; accordingly, I do not feel justified in giving the case *stare decisis* effect. See *id.*, at 599, 116 S.Ct. 1589. I would affirm the judgment of the Utah Supreme Court.

Justice THOMAS, dissenting.

I would affirm the judgment below because "I continue to believe that the Constitution does not constrain the size of

punitive damages awards." *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 443, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) (THOMAS, J., concurring) (citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 599, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) (SCALIA, J., joined by THOMAS, J., dissenting)). Accordingly, I respectfully dissent.

****1527** Justice GINSBURG, dissenting.

Not long ago, this Court was hesitant to impose a federal check on state-court judgments awarding **punitive damages**. In *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989), the Court held that neither the Excessive Fines Clause of the Eighth Amendment nor federal common law circumscribed awards of **punitive damages** in civil cases between private parties. *Id.*, at 262-276, 277-280, 109 S.Ct. 2909. Two years later, in *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991), the Court observed that "unlimited jury [or judicial] discretion ... in the fixing of **punitive damages** may invite extreme results that jar one's constitutional sensibilities," *id.*, at 18, 111 S.Ct. 1032; the Due Process Clause, the Court suggested, would attend to those sensibilities and guard against unreasonable awards, *id.*, at 17-24, 111 S.Ct. 1032. Nevertheless, the Court upheld a **punitive damages** award in *Haslip* "more than 4 times the amount of compensatory damages, ... more than 200 times [the plaintiffs] out-of-pocket expenses," and "much in excess of the fine that could be imposed." *Id.*, at 23, 111 S.Ct. 1032. And in *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993), the Court affirmed a state-court award "526 times greater than the actual damages awarded by the jury." *Id.*, at 453, 113 S.Ct. 2711; [FN1] cf. *Browning-Ferris*, 492 U.S., at 262, 109 S.Ct. 2909 (ratio of punitive to compensatory damages over 100 to 1).

FN1. By switching the focus from the ratio of punitive to compensatory damages to the potential loss to the plaintiffs had the defendant succeeded in its illicit scheme, the Court could describe the relevant ratio in *TXO* as 10 to 1. See *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 581, and n. 34, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996).

It was not until 1996, in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809, that the Court, for the first time, invalidated a state-court **punitive damages** assessment as unreasonably large. ***431**

See *id.*, at 599, 116 S.Ct. 1589 (SCALIA, J., dissenting). If our activity in this domain is now "well established," see *ante*, at 1519, 1525, it takes place on ground not long held.

In *Gore*, I stated why I resisted the Court's foray into **punitive damages** "territory traditionally within the States' domain." 517 U.S., at 612, 116 S.Ct. 1589 (dissenting opinion). I adhere to those views, and note again that, unlike federal habeas corpus review of state-court convictions under 28 U.S.C. § 2254, the Court "work[s] at this business [of checking state courts] alone," unaided by the participation of federal district courts and courts of appeals. 517 U.S., at 613, 116 S.Ct. 1589. It was once recognized that "the laws of the particular State must suffice [to superintend **punitive damages** awards] until judges or legislators authorized to do so initiate system-wide change." *Haslip*, 499 U.S., at 42, 111 S.Ct. 1032 (KENNEDY, J., concurring in judgment). I would adhere to that traditional view.

I

The large size of the award upheld by the Utah Supreme Court in this case indicates why damages-capping legislation may be altogether fitting and proper. Neither the amount of the award nor the trial record, however, justifies this Court's substitution of its judgment for that of Utah's competent decisionmakers. In this regard, I count it significant that, on the key criterion "reprehensibility," there is a good deal more to the story than the Court's abbreviated account tells.

Ample evidence allowed the jury to find that State Farm's treatment of the Campbells typified its "Performance, Planning and Review" (PP & R) program; implemented by top management in 1979, the program had "the explicit objective of using the claims-adjustment process as a ****1528** profit center." App. to Pet. for Cert. 116a. "[T]he Campbells presented considerable evidence," the trial court noted, documenting "that the PP & R program ... has functioned, and continues to function, as an unlawful scheme ... to deny benefits owed consumers by paying out less than fair value in order to meet ***432** preset, arbitrary payout targets designed to enhance corporate profits." *Id.*, at 118a-119a. That policy, the trial court observed, was encompassing in scope; it "applied equally to the handling of both third-party and first-party claims." *Id.*, at 119a. But cf. *ante*, at 1523-1524, 1525 (suggesting that State Farm's handling of first-party claims has "nothing to do with a third-party lawsuit").

Evidence the jury could credit demonstrated that the PP & R program regularly and adversely affected Utah residents. Ray Summers, "the adjuster who handled the

Campbell case and who was a State Farm employee in Utah for almost twenty years," described several methods used by State Farm to deny claimants fair benefits, for example, "falsifying or withholding of evidence in claim files." App. to Pet. for Cert. 121a. A common tactic, Summers recounted, was to "unjustly attac[k] the character, reputation and credibility of a claimant and mak[e] notations to that effect in the claim file to create prejudice in the event the claim ever came before a jury." *Id.*, at 130a (internal quotation marks omitted). State Farm manager Bob Noxon, Summers testified, resorted to a tactic of this order in the Campbell case when he "instruct[ed] Summers to write in the file that Todd Ospital (who was killed in the accident) was speeding because he was on his way to see a pregnant girlfriend." *Ibid.* In truth, "[t]here was no pregnant girlfriend." *Ibid.* Expert testimony noted by the trial court described these tactics as "completely improper." *Ibid.*

The trial court also noted the testimony of two Utah State Farm employees, Felix Jensen and Samantha Bird, both of whom recalled "intolerable" and "recurrent" pressure to reduce payouts below fair value. *Id.*, at 119a (internal quotation marks omitted). When Jensen complained to top managers, he was told to "get out of the kitchen" if he could not take the heat; Bird was told she should be "more of a team player." *Ibid.* (internal quotation marks omitted). At times, Bird said, she "was forced to commit dishonest acts ***433** and to knowingly underpay claims." *Id.*, at 120a. Eventually, Bird quit. *Ibid.* Utah managers superior to Bird, the evidence indicated, were improperly influenced by the PP & R program to encourage insurance underpayments. For example, several documents evaluating the performance of managers Noxon and Brown "contained explicit preset average payout goals." *Ibid.*

Regarding liability for verdicts in excess of policy limits, the trial court referred to a State Farm document titled the "Excess Liability Handbook"; written before the Campbell accident, the handbook instructed adjusters to pad files with "self-serving" documents, and to leave critical items out of files, for example, evaluations of the insured's exposure. *Id.*, at 127a-128a (internal quotation marks omitted). Divisional superintendent Bill Brown used the handbook to train Utah employees. *Id.*, at 134a. While overseeing the Campbell case, Brown ordered adjuster Summers to change the portions of his report indicating that Mr. Campbell was likely at fault and that the settlement cost was correspondingly high. *Id.*, at 3a. The Campbells' case, according to expert testimony the trial court recited, "was a classic example of State Farm's application of the improper practices taught in the Excess

Liability Handbook." *Id.*, at 128a.

The trial court further determined that the jury could find State Farm's policy "deliberately crafted" to prey on consumers who would be unlikely to defend themselves. *Id.*, at 122a. In this regard, the trial court noted the testimony of several former State Farm employees affirming that they were trained to target "the ****1529** weakest of the herd"--"the elderly, the poor, and other consumers who are least knowledgeable about their rights and thus most vulnerable to trickery or deceit, or who have little money and hence have no real alternative but to accept an inadequate offer to settle a claim at much less than fair value." *Ibid.* (internal quotation marks omitted).

***434** The Campbells themselves could be placed within the "weakest of the herd" category. The couple appeared economically vulnerable and emotionally fragile. App. 3360a-3361a (Order Denying State Farm's Motion for Judgment NOV and New Trial Regarding Intentional Infliction of Emotional Distress). At the time of State Farm's wrongful conduct, "Mr. Campbell had residuary effects from a stroke and Parkinson's disease." *Id.*, at 3360a.

To further insulate itself from liability, trial evidence indicated, State Farm made "systematic" efforts to destroy internal company documents that might reveal its scheme, App. to Pet. for Cert. 123a, efforts that directly affected the Campbells, *id.*, at 124a. For example, State Farm had "a special historical department that contained a copy of all past manuals on claim-handling practices and the dates on which each section of each manual was changed." *Ibid.* Yet in discovery proceedings, State Farm failed to produce any claim-handling practice manuals for the years relevant to the Campbells' bad-faith case. *Id.*, at 124a-125a.

State Farm's inability to produce the manuals, it appeared from the evidence, was not accidental. Documents retained by former State Farm employee Samantha Bird, as well as Bird's testimony, showed that while the Campbells' case was pending, Janet Cammack, "an in-house attorney sent by top State Farm management, conducted a meeting ... in Utah during which she instructed Utah claims management to search their offices and destroy a wide range of material of the sort that had proved damaging in bad-faith litigation in the past--in particular, old claim-handling manuals, memos, claim school notes, procedure guides and other similar documents." *Id.*, at 125a. "These orders were followed even though at least one meeting participant, Paul Short, was personally aware that these kinds of materials had been requested by the Campbells in this very case." *Ibid.*

Consistent with Bird's testimony, State Farm admitted that it destroyed every single copy of claim-handling manuals ***435** on file in its historical department as of 1988, even though these documents could have been preserved at minimal expense. *Ibid.* Fortunately, the Campbells obtained a copy of the 1979 PP & R manual by subpoena from a former employee. *Id.*, at 132a. Although that manual has been requested in other cases, State Farm has never itself produced the document. *Ibid.*

"As a final, related tactic," the trial court stated, the jury could reasonably find that "in recent years State Farm has gone to extraordinary lengths to stop damaging documents from being created in the first place." *Id.*, at 126a. State Farm kept no records at all on excess verdicts in third-party cases, or on bad-faith claims or attendant verdicts. *Ibid.* State Farm alleged "that it has no record of its punitive damage payments, even though such payments must be reported to the [Internal Revenue Service] and in some states may not be used to justify rate increases." *Ibid.* Regional Vice President Buck Moskalski testified that "he would not report a punitive damage verdict in [the Campbells'] case to higher management, as such reporting was not set out as part of State Farm's management practices." *Ibid.*

State Farm's "wrongful profit and evasion schemes," the trial court underscored, were directly relevant to the Campbells' case, *id.*, at 132a:

"The record fully supports the conclusion that the bad-faith claim handling that exposed the Campbells to an excess verdict in 1983, and resulted in severe ****1530** damages to them, was a product of the unlawful profit scheme that had been put in place by top management at State Farm years earlier. The Campbells presented substantial evidence showing how State Farm's improper insistence on claims-handling employees' reducing their claim payouts ... regardless of the merits of each claim, manifested itself ... in the Utah claims operations during the period when the decisions were made not to offer to settle the Campbell case for the \$50,000 policy limits--***436** indeed, not to make any offer to settle at a lower amount. This evidence established that high-level manager Bill Brown was under heavy pressure from the PP & R scheme to control indemnity payouts during the time period in question. In particular, when Brown declined to pay the excess verdict against Curtis Campbell, or even post a bond, he had a special need to keep his year-end numbers down, since the State Farm incentive scheme meant that keeping those numbers down was important to helping Brown get a much-desired transfer to Colorado.... There was ample evidence that the concepts taught in the Excess Liability

Handbook, including the dishonest alteration and manipulation of claim files and the policy against posting any supersedeas bond for the full amount of an excess verdict, were dutifully carried out in this case.... There was ample basis for the jury to find that everything that had happened to the Campbells--when State Farm repeatedly refused in bad-faith to settle for the \$50,000 policy limits and went to trial, and then failed to pay the 'excess' verdict, or at least post a bond, after trial--was a direct application of State Farm's overall profit scheme, operating through Brown and others." *Id.*, at 133a-134a.

State Farm's "policies and practices," the trial evidence thus bore out, were "responsible for the injuries suffered by the Campbells," and the means used to implement those policies could be found "callous, clandestine, fraudulent, and dishonest." *Id.*, at 136a; see *id.*, at 113a (finding "ample evidence" that State Farm's reprehensible corporate policies were responsible for injuring "many other Utah consumers during the past two decades"). The Utah Supreme Court, relying on the trial court's record-based recitations, understandably characterized State Farm's behavior as "egregious and malicious." *Id.*, at 18a.

*437 II

The Court dismisses the evidence describing and documenting State Farm's PP & R policy and practices as essentially irrelevant, bearing "no relation to the Campbells' harm." *Ante*, at 1523; see *ante*, at 1524 ("conduct that harmed [the Campbells] is the only conduct relevant to the reprehensibility analysis"). It is hardly apparent why that should be so. What is infirm about the Campbells' theory that their experience with State Farm exemplifies and reflects an overarching underpayment scheme, one that caused "repeated misconduct of the sort that injured them," *ante*, at 1523? The Court's silence on that score is revealing: Once one recognizes that the Campbells did show "conduct by State Farm similar to that which harmed them," *ante*, at 1524, it becomes impossible to shrink the reprehensibility analysis to this sole case, or to maintain, at odds with the determination of the trial court, see App. to Pet. for Cert. 113a, that "the adverse effect on the State's general population was in fact minor," *ante*, at 1525.

Evidence of out-of-state conduct, the Court acknowledges, may be "probative [even if the conduct is lawful in the State where it occurred] when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious...." *Ante*, at 1522; cf. *ante*, at 1521 (reiterating this Court's instruction that trial courts assess whether "the harm was the result of intentional

malice, trickery, **1531 or deceit, or mere accident"). "Other acts" evidence concerning practices both in and out of State was introduced in this case to show just such "deliberateness" and "culpability." The evidence was admissible, the trial court ruled: (1) to document State Farm's "reprehensible" PP & R program; and (2) to "rebut [State Farm's] assertion that [its] actions toward the Campbells were inadvertent errors or mistakes in judgment." App. 3329a (Order Denying Various Motions of State Farm to Exclude Plaintiffs' Evidence). Viewed in this light, there surely was "a nexus" between much of the "other *438 acts" evidence and "the specific harm suffered by [the Campbells]." *Ante*, at 1522.

III

When the Court first ventured to override state-court **punitive damages** awards, it did so moderately. The Court recalled that "[i]n our federal system, States necessarily have considerable flexibility in determining the level of **punitive damages** that they will allow in different classes of cases and in any particular case." *Gore*, 517 U.S., at 568, 116 S.Ct. 1589. Today's decision exhibits no such respect and restraint. No longer content to accord state-court judgments "a strong presumption of validity," *TXO*, 509 U.S., at 457, 113 S.Ct. 2711, the Court announces that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Ante*, at 1524. [FN2] Moreover, the Court adds, when compensatory damages are substantial, doubling those damages "can reach the outermost limit of the due process guarantee." *Ibid.*; see *ante*, at 1526 ("facts of this case ... likely would justify a **punitive damages** award at or near the amount of compensatory damages"). In a legislative scheme or a state high court's design to cap **punitive damages**, the handiwork in setting single-digit and 1-to-1 benchmarks could hardly be questioned; in a judicial decree imposed on the States by this Court under the banner of substantive due process, the numerical controls today's decision installs seem to me boldly out of order.

FN2. *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 462, n. 8, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993), noted that "[u]nder well-settled law," a defendant's "wrongdoing in other parts of the country" and its "impressive net worth" are factors "typically considered in assessing **punitive damages**." It remains to be seen whether, or the extent to which, today's decision will unsettle that law.

* * *

I remain of the view that this Court has no warrant to reform state law governing awards of **punitive damages**. *439 *Gore*, 517 U.S., at 607, 116 S.Ct. 1589 (GINSBURG, J., dissenting). Even if I were prepared to accept the flexible guides prescribed in *Gore*, I would not join the Court's swift conversion of those guides into instructions that begin to resemble marching orders. For the reasons stated, I would leave the judgment of the Utah Supreme Court undisturbed.

538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585, 71 USLW 4282, 60 Fed.R. Evid. Serv. 1349, Prod.Liab.Rep. (CCH) P 16,805, 03 Cal. Daily Op. Serv. 2948, 2003 Daily Journal D.A.R. 3783, 16 Fla. L. Weekly Fed. S 216, 1 A.L.R. Fed. 2d 739

Supreme Court of Florida.
OWENS-CORNING FIBERGLAS
CORPORATION v.
BALLARD

749 So.2d 483) (Fla. 1999)

ANSTEAD, J.

We accepted jurisdiction to answer the following question certified to be of great public importance:

IS THE STATUTORY PRESUMPTION AS TO EXCESSIVE **PUNITIVE DAMAGES**, FOUND IN SECTION 768.73(1), FLORIDA STATUTES, OVERCOME IN A CASE WHERE THE **PUNITIVE DAMAGES** AWARD IS ALMOST 18 TIMES THE COMPENSATORY DAMAGES AWARDED, WHEN IT IS BASED ON CLEAR AND CONVINCING EVIDENCE THAT THE AWARD WAS LESS THAN 2% OF THE DEFENDANT COMPANY'S NET WORTH, AND THAT THE DEFENDANT'S CONDUCT WAS MORE EGREGIOUS THAN THE STANDARD OF WANTON AND WILFUL DISREGARD *484 FOR THE SAFETY OF THE PLAINTIFF?

Owens-Corning Fiberglas Corp. v. Ballard, 739 So.2d 603, 608 (Fla. 4th DCA 1998). We answer the certified question in the affirmative and approve the decision of the court below.

MATERIAL FACTS

Respondent Deward Ballard, a nonresident of Florida, brought the instant action against petitioner Owens-Corning, alleging that during the 1960s and 1970s he had been exposed to a dangerous asbestos product manufactured by Owens-Corning. Three years after the complaint was filed, two months after the case was ordered set for trial, and three months before the trial

actually commenced, Owens-Corning filed a motion to dismiss based on forum non conveniens. The trial court denied the motion.

The case proceeded to a bifurcated jury trial in January 1997. According to the evidence at trial, Ballard was diagnosed with mesothelioma, a rare form of cancer of the lining of the chest, due to exposure to Owens-Corning's product containing asbestos fibers. The evidence indicates that Owens-Corning produced Kaylo, a product containing asbestos fibers, for approximately thirty years, or until 1972 when Owens-Corning finally ceased using asbestos in its products. During the time that Owens-Corning produced Kaylo, Ballard worked on numerous job sites around the nation where he was exposed to Kaylo. After the trial on the liability issue, the jury found Owens-Corning was negligent and strictly liable to Ballard for selling Kaylo. It assessed compensatory damages of \$1.8 million and determined Owens-Corning also was liable for **punitive damages**. [FN1]

FN1. Owens-Corning immediately moved for a directed verdict on the **punitive damages** claim, arguing for the first time that it could not be punished for conduct outside of Florida. The trial court initially reserved ruling on that issue and later denied the motion during posttrial proceedings.

During the **punitive damages** portion of the trial, Ballard presented evidence as to the company's financial position and reaction concerning the asbestos litigation. The evidence included a 1996 Fact Sheet, a 1995 Annual Report, and a copy of 1992 Annual Meeting Remarks by CEO Glen H. Hiner. The 1996 Fact Sheet provides Owens-Corning's income statement and balance sheet and indicates Owens-Corning's projected goal to reach some \$5 billion in total sales by the year 2000. At the time of trial, the company's net income for 1995 was \$231 million and its most recent market value was \$2.5 billion (based on the number of outstanding shares of common stock). As for the company's response concerning the asbestos litigation, the 1995 Annual Report revealed Hiner's belief that the "vast majority of new claimants are not sick" and that "many of the cases were filed by lawyers eager to maximize their fees before tort reform legislation goes in effect." Hiner also remarked that the company had placed the asbestos litigation behind it and will focus instead on building the company's enterprise and not on "shedding tears about the past." Finally, the 1995 Annual Report indicates that due to reserved funds and insurance coverage, the pending and future asbestos litigation claims "will not have a materially adverse effect on the company's

financial position." A representative from Owens-Corning testified as to both the small profits from Kaylo sales and the financial burdens placed on the company by a deluge of asbestos claims.

The factors instructed upon by the judge to the jury to consider in resolving the **punitive damages** issue included: (1) an amount reasonable in relation to the harm likely to result from Owens-Corning's conduct as well as the harm that actually has occurred; (2) the degree of reprehensibility of Owens-Corning's conduct, the duration of that harmful conduct, Owens-Corning's awareness, any concealment and the *485 existence and frequency of similar past conduct; (3) the profitability to Owens-Corning of the wrongful conduct and the desirability of removing that profit and of having Owens-Corning also sustain a loss; (4) the financial condition of Owens-Corning and the probable effect thereon of a particular judgment; (5) all the costs of litigation to defendant and to the plaintiff; (6) the total punishment Owens-Corning has or will probably receive from other sources, as a mitigating factor; (7) the seriousness of the hazard to the public, the attitude and conduct of Owens-Corning upon discovery of the misconduct; (8) the degree of Owens-Corning's awareness of the hazard and of its excessiveness; (9) the number and level of employees involved in causing or covering up the marketing misconduct; (10) the duration of both the improper marketing behavior and its cover-up; and (11) the existence of other civil awards against Owens-Corning for the same conduct. Thereafter, the jury deliberated and subsequently assessed \$31 million in **punitive damages** against Owens-Corning.

Owens-Corning then filed several motions for new trial, including a motion contesting the excessive amount of the **punitive damages** award. The trial court denied the various motions, specifically finding that clear and convincing evidence supported the jury's **punitive damages** award. On appeal, the Fourth District held, in part, that the **punitive damages** award against Owens-Corning was not against the manifest weight of the evidence based on the actual harm to the respondent and others where the evidence showed that "Owens-Corning knew of the deleterious health risks associated with Kaylo for decades, yet failed to warn its consumers, change its process, remove the asbestos, and/or replace the fibers with readily available, asbestos-free fibers." *Ballard*, 739 So.2d at 608. The district court also noted that the punitive award was less than two percent of Owens-Corning's net worth, which was measured in billions of dollars. Accordingly, the district court held that the trial

court did not abuse its discretion in failing to reduce the **punitive damages** award. *Id.* [FN2] In certifying the question to this Court, the district court, in essence, asks us to check its work here. [FN3]

FN2. The district court also held that the **punitive damages** award was proper in this case despite the fact that the injury causing conduct did not occur in the state of Florida. In so holding, the court distinguished *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), which held that a state may not impose economic sanctions against violators of its laws to induce other states to change their laws. The court held that because Owens-Corning's conduct was unlawful in all fifty states, the "same due process concerns implicated in *BMW* do not arise." *Ballard*, 739 So.2d at 608. The parties have not raised the propriety of this ruling on appeal.

FN3. Although we accepted review in this case, the certified question appears to be more of a request for our approval of the conclusion reached by the court below than an issue involving great public importance. In most cases we would discourage district courts from asking for this kind of check on its decision as a question of great public importance. Arguably, however, the nature of the claim here and the amount awarded justify review. Therefore, we retain jurisdiction and answer the certified question in the affirmative.

LEGAL ANALYSIS

[1] In 1986, the Florida Legislature enacted section 768.73, Florida Statutes (1997), which created statutory criteria for judicial review of punitive damage awards exceeding three times the amount awarded for compensatory damages. *See* § 768.73(1)(b), Fla. Stat. (1997). Section 768.73 states in pertinent part:

(1)(a) In any civil action ... involving willful, wanton, or gross misconduct, the judgment for the total amount of **punitive damages** awarded to a claimant *may not exceed three times the amount of compensatory damages awarded to each person* entitled thereto by the trier *486 of fact, except as provided in paragraph (b)...

(b) If any award for **punitive damages** exceeds the limitation specified in paragraph (a), the award is presumed to be excessive and the defendant is entitled to remittitur of the amount in excess of the limitation *unless the claimant demonstrates to the court by clear*

and convincing evidence that the award is not excessive in light of the facts and circumstances which were presented to the trier of fact.

See *id.* § 768.73(1)(a)-(b) (emphasis added). While the statute provides an initial cap on **punitive damages** of three times the amount of compensatory damages, it also provides for an exception to the cap where clear and convincing evidence establishes that the plaintiff is entitled to the excess verdict. [FN4] It is the application of the exception that is at issue here.

FN4. Although it is not defined in the statute, this Court defines the standard "clear and convincing evidence" as "an intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy." *In re Adoption of Baby E.A.W.*, 658 So.2d 961, 967 (Fla.1995).

[2][3] In essence, we are called upon to determine whether the award of **punitive damages** in excess of the statutory cap overcomes the legislative presumption of excessiveness. [FN5] Under Florida law, the purpose of **punitive damages** is not to further compensate the plaintiff, but to punish the defendant for its wrongful conduct and to deter similar misconduct by it and other actors in the future. See *W.R. Grace & Co.-Conn. v. Waters*, 638 So.2d 502, 504 (Fla.1994); see also *White Constr. Co., Inc. v. Dupont*, 455 So.2d 1026, 1028 (Fla.1984); *St. Regis Paper Co. v. Watson*, 428 So.2d 243, 247 (Fla.1983). In *White Construction Co.*, we reaffirmed the standard necessary to justify the imposition of **punitive damages**:

FN5. We note that none of the parties in this case have raised the constitutionality of the amount of **punitive damages** awarded in this case.

The character of negligence necessary to sustain an award of **punitive damages** must be of a "gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an

intentional violation of them".

455 So.2d at 1029 (quoting *Carraway v. Revell*, 116 So.2d 16, 20 n. 12 (Fla.1959)). Hence, **punitive damages** are appropriate when a defendant engages in conduct which is fraudulent, malicious, deliberately violent or oppressive, or committed with such gross negligence as to indicate a wanton disregard for the rights and safety of others. [FN6] See *Waters*, 638 So.2d at 503; *Chrysler Corp. v. Wolmer*, 499 So.2d 823 (Fla.1986); *White Constr. Co.*, 455 So.2d at 1028-29.

FN6. We decline to consider Owens-Corning's argument that plaintiffs must show actual malice or a level of intent similar to that required to prove an intentional tort because this argument was not presented to the trial court, nor was it mentioned in the opinion by the court below. Because this argument was not the specific ground asserted before the trial court, it may not be raised for the first time on appeal. See *Archer v. State*, 613 So.2d 446, 448 (Fla.1993).

The decision whether to award **punitive damages** and the amount that should be awarded have traditionally been questions for the jury to determine. See *Wackenhut Corp. v. Canty*, 359 So.2d 430 (Fla.1978). In *Wackenhut*, we observed:

The court is to decide at the close of the evidence whether there is a legal basis for recovery of **punitive damages** shown *487 by any interpretation of the evidence favorable to the plaintiff... Once the court permits the issue of **punitive damages** to go to the jury, *the jury has the discretion whether or not to award punitive damages and the amount which should be awarded. Punitive damages* "are peculiarly left to the discretion of the jury as the degree of punishment to be inflicted must always be dependent on the circumstances of each case, as well as upon the demonstrated degree of malice, wantonness, oppression, or outrage *found by the jury* from the evidence."

Id. at 435-36 (first emphasis added) (quoting *Winn & Lovett Grocery Co. v. Archer*, 126 Fla. 308, 171 So. 214, 221 (1936)). Of course, the statutory scheme under review here mandates increased scrutiny of punitive damage awards. In this case, Owens-Corning argues that the jury verdict award which exceeded three times the statutory cap is clearly excessive under the statutory scheme and, therefore, remittitur or a new trial is in order.

Initially, we note that before submitting the case to the jury, the trial court properly instructed the jury on a number of relevant factors it could consider in aggravation

and mitigation in determining what, if any, amount of **punitive damages** to impose. Those factors are set out above, and Owens-Corning does not challenge these factors.

Further, and most importantly, we note that in denying Owens-Corning's posttrial motions for new trial and remittitur the trial court provided a well-reasoned and detailed order in accordance with the statutory scheme set out in section 768.73(1). That order speaks for itself:

The clear and convincing evidence in this case revealed that for more than thirty (30) years Owens-Corning concealed what it knew about the dangers of asbestos. In fact, Owens-Corning's conduct was even worse than concealment, it also included intentional and knowing, misrepresentations concerning the danger of its asbestos containing product, Kaylo. For instance, in 1956, Owens-Corning, after having been told by the Saranac Laboratory that Kaylo dust was "toxic", and that asbestos was a carcinogen, advertised Kaylo as being "non-toxic". In 1972, after Owens-Corning developed an asbestos free version of the Kaylo product, Owens-Corning knowingly and intentionally contaminated the new product with asbestos containing debris from its old Kaylo, and then intentionally and knowingly claimed falsely that the new Kaylo product was asbestos free. This was done despite Owens-Corning's knowledge that even slight exposures to asbestos in Kaylo could cause mesothelioma, as it did in this case, an always fatal cancer of the lining of the chest wall.

In addition to the acts noted above, in 1962 Owens-Corning also refused to market an asbestos free product known as GPL-400 in place of Kaylo. The clear and convincing evidence showed that although Owens-Corning knew that GPL-400 was not as dangerous as Kaylo, Owens-Corning refused to market GPL-400 because it was not as profitable as Kaylo. The uncontradicted evidence also demonstrated that from 1964 through 1966, Owens-Corning, despite its actual knowledge concerning the danger of its product Kaylo, refused to warn consumers of those dangers. The clear and convincing evidence further showed that in the late 1960's, Owens-Corning elected not to make any significant effort to remove asbestos from Kaylo despite the fact that they knew that the asbestos in Kaylo would cause cancer [sic]. The clear and convincing evidence revealed that Owens-Corning refused to make any such effort in the late 1960's because the removal of asbestos from Kaylo at that time did not offer any sales growth potential.

The uncontradicted evidence was that the net worth of Owens-Corning is approximately \$2.5 Billion. The uncontradicted *488 evidence was that only \$182

million has been paid by Owens-Corning for resolution of 179,000 prior asbestos claims during the period of 1966 through 1996. The uncontradicted evidence at trial was that Owens-Corning did not know how much, if any, money it had paid for the misconduct proven in this case. The uncontradicted evidence in this case was that Owens-Corning's past and future liability in asbestos cases would have no significant impact upon the corporation. Greg Peterson, an Owens-Corning employee, testified that an award of \$10 million in **punitive damages** in this case would not significantly impact Owens-Corning.

In essence, the trial court concluded that based on Owens-Corning's \$2.5 billion net worth and the serious nature of their misconduct involving substantial harm to persons exposed to its products, clear and convincing evidence existed "to support the \$31 million **punitive damages** award rendered by the jury in this case."

[4] We conclude that the district court properly reviewed the trial court's findings in light of the statutory scheme and applied the appropriate standard of review on appeal.

In *Lassiter v. International Union of Operating Engineers*, 349 So.2d 622 (Fla.1977), we held that in such cases appellate courts may review a trial court's ruling "only for an abuse of discretion":

Two factors unite to favor a very restricted review of an order denying a motion for new trial on ground of excessive verdict. The first of these is the deference due the trial judge, who has had the opportunity to observe the witnesses and to consider the evidence in the context of a living trial rather than upon a cold record. The second factor is the deference properly given to the jury's determination of such matters of fact as the weight of the evidence and the quantum of damages.

349 So.2d at 627. In particular, here we recognize the district court was obligated to decide whether the trial court had properly applied the statutory scheme set out in section 768.73(1) in determining whether there had been an abuse of discretion. It is apparent on the face of the opinion that the district court carefully considered the statutory scheme and reviewed the evidence in relation to the trial court's legal analysis and findings in this case. Accordingly, we find no error in the district court's review. [FN7]

FN7. We decline to address Owens-Corning's second issue on appeal, that of forum nonconveniens, as it is beyond the scope of the certified question in this case. The district court also correctly refused to consider Owens-Corning's argument that the punitive award

should be mitigated by the fact it has paid punitive awards in past claims because no evidence of those past awards was presented in the trial court. While punitive awards in other cases is a proper factor for juries to consider in deciding the amount of **punitive damages** to award, the burden rests on the defendant to produce such evidence during the punitive portion of the bifurcated trial proceedings. *See Waters*, 638 So.2d at 506. Owens-Corning did not present to the trier of fact any evidence as to the amount it has *paid* for past punitive awards; rather, Owens-Corning presented evidence as to the total amount paid in resolving asbestos-related claims without specifying whether such payments represented compensatory or **punitive damages**. Thus, it should not be permitted to present for the first time on appeal evidence as to the amount of **punitive damages** paid in the past. *See Archer*, 613 So.2d at 448.

Upon our review of the record, we too can find no error in the trial court's analysis and conclusion that the evidence at trial reasonably supported a finding by the trier of fact of a flagrant disregard for the safety of those persons exposed to Kaylo, the product Owens-Corning knew contained dangerous and toxic materials. The trial court concluded that there was evidence presented to the jury that even after Owens-Corning was informed of Kaylo's cancer-causing effect, it refused to discontinue producing Kaylo or switch to a less injurious product. Based on this evidence of Owens-Corning's apparent indifference to the health and safety of those persons, including Ballard, who used Kaylo, we find *489 that the trial court acted properly and responsibly under section 768.73(1) in determining that the **punitive damages** award in this case properly fell within the exception to the statutory cap.

Indeed, it would appear that this case presents the precise kind of circumstances contemplated by the Legislature in providing for an exception. The Legislature, by providing for the exception, clearly contemplated that there would be circumstances that justified an award above the statutory presumption. Further, it would be difficult to envision a more egregious set of circumstances than those found herein by the trial court to constitute a blatant disregard for human safety involving large numbers of people put at life-threatening risk. Obviously, our society places a high value on human life and safety. Given the clear and convincing evidence of the nature and magnitude of the risk of harm to human life found here, we find no abuse of

discretion in the trial court's order approving the jury's award, or in the district court's review of that order.

We recognize that the Legislature recently amended section 768.73. *See* Ch. 99-225, § 23, Laws of Fla. (enacted into law May 26, 1999). Under the new version of the statute, **punitive damages** awards may not exceed three times the amount of compensatory damages or \$500,000. The only exceptions to this statutory cap appear to be where the defendant's conduct was motivated by unreasonable financial gain [FN8] or where the defendant intended to harm the plaintiff. [FN9] The new law also appears to protect defendants [FN10] who have been subjected to **punitive damages** awards in the past; under the amended version of the law, **punitive damages** may not be awarded against such defendants unless the court finds by clear and convincing evidence that the prior awards were insufficient to punish the defendant. The amendments to the law, however, do not take effect until October 1, 1999. *See* Ch. 99-225, § 36. Therefore, the recent amendments to section 768.73 do not affect the result we reach in this case. [FN11]

FN8. In such cases, plaintiffs may recover an award amount up to four times the compensatory damages awarded or \$2 million.

FN9. The Legislature has placed no cap on **punitive damages** awards where the defendant specifically intended to harm the plaintiff and the defendant's conduct did in fact harm the plaintiff.

FN10. The Legislature appears to create an exception for those defendants who fall within subsection (b) of the amended statute.

FN11. In referencing the recent legislative amendments to section 768.73, our sole purpose is to note the existence of the amendments, and we offer no opinion on the substantive nature of the amended law.

Accordingly, finding no error in the district court's review or its interpretation or application of the statutory scheme, we approve the decision below.

It is so ordered.

HARDING, C.J., and SHAW, WELLS and PARIENTE, JJ., concur.

OVERTON, Senior Justice, dissents with an opinion.

VERTON, Senior Justice, dissenting.

The punitive damage issues in this case are significant and have major public policy ramifications. This was the largest punitive damage verdict awarded by Florida courts, and what is significant to me is that this punishment, by way of **punitive damages**, is awarded to a nonresident of this state for conduct by the defendant that occurred outside this state.

The relevant facts in this case reflect that the plaintiff Ballard, *a nonresident of Florida*, brought this action against Owens-Corning alleging he had been exposed to Kaylo during the 1960s and 1970s in six separate states, *but not in Florida*. This case proceeded to a bifurcated jury trial in January of 1997. In the negligence phase, the jury found that Owens-Corning was ***490** negligent and strictly liable to Ballard for selling Kaylo. It assessed compensatory damages to him in the amount of \$1.8 million and determined that Owens-Corning also was liable for **punitive damages**. At this point, Owens-Corning immediately moved for a directed verdict on **punitive damages**, arguing it could not be punished for conduct outside of Florida. That motion was eventually denied by the trial court. In the punitive damage punishment phase, the plaintiff Ballard presented evidence as to the company's financial position, and Owens-Corning testified as to the small profits from Kaylo sales and the financial burdens placed on the company by a deluge of asbestos claims. The jury awarded \$31 million in punitive damage claims.

Section 768.73, Florida Statutes (1995), entitled "**Punitive damages**; limitation" is implicated in this case. That statutory section provides in pertinent part:

(1)(a) In any civil action based on negligence, strict liability, products liability, misconduct in commercial transactions, professional liability, or breach of warranty, and involving willful, wanton, or gross misconduct, *the judgment for the total amount of **punitive damages** awarded to a claimant may not exceed three times the amount of compensatory damages* awarded to each person entitled thereto by the trier of fact, except as provided in paragraph (b). However, this subsection does not apply to any class action.

(b) If any award for **punitive damages** exceeds the limitation specified in paragraph (a), *the award is presumed to be excessive and the defendant is entitled to remittitur of the amount in excess of the limitation unless the claimant demonstrates to the court by clear and convincing evidence that the award is not excessive*

in light of the facts and circumstances which were presented to the trier of fact.
(Emphasis added.)

It may be a justiciable issue as to whether the exception in this statute applies to this award under this evidence. However, more important to me is the fact that I find this State through its judicial branch has absolutely no constitutional authority or jurisdiction to impose the penalty of **punitive damages** for the benefit of a nonresident of Florida for a defendant's conduct that occurred outside this state. We have no more authority to impose **punitive damages** in this case than we have to impose a criminal sentence for a crime that occurred in the state of Georgia.

WEST'S FLORIDA STATUTES ANNOTATED

PART II. DAMAGES

768.73. Punitive damages; limitation

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of \$500,000.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of \$2 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on

punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(2)(a) Except as provided in paragraph (b), punitive damages may not be awarded against a defendant in a civil action if that defendant establishes, before trial, that punitive damages have previously been awarded against that defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages. For purposes of a civil action, the term "the same act or single course of conduct" includes acts resulting in the same manufacturing defects, acts resulting in the same defects in design, or failure to warn of the same hazards, with respect to similar units of a product.

(b) In subsequent civil actions involving the same act or single course of conduct for which punitive damages have already been awarded, if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish that defendant's behavior, the court may permit a jury to consider an award of subsequent punitive damages. In permitting a jury to consider awarding subsequent punitive damages, the court shall make specific findings of fact in the record to support its conclusion. In addition, the court may consider whether the defendant's act or course of conduct has ceased. Any subsequent punitive damage awards must be reduced by the amount of any earlier punitive damage awards rendered in state or federal court.

(3) The claimant attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than punitive damages.

(4) The jury may neither be instructed nor informed as to the provisions of this section.

(5) The provisions of this section shall be applied to all causes of action arising after the effective date of this act.