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Louisiana High Court Further Defines Due-Process Limits on Punitive Damages

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States, and generally juries, have considerable discretion in assessing punitive damages in different classes of cases. However, the U.S. Supreme Court has consistently held that these awards must not be "grossly excessive" such that they would violate the Due Process Clause of the Fourteenth Amendment.[1] While courts have refused to impose a "bright-line ratio" that punitive damages awards cannot exceed, in its recent *Warren v. Shelter Mutual Ins. Co.* decision the Louisiana Supreme Court enumerated criteria for determining when punitive damage awards are "reasonable" and thus comport with due process.[2]

In *Warren*, a boat passenger died after a loss of hydraulic fluid from the boat's steering system caused an accident. His father filed suit against the system's manufacturer, Teleflex, under general maritime law and the Louisiana Products Liability Act. Evidence at trial indicated that Teleflex knew a very small loss of fluid in the hydraulic system could lead to a complete failure of the steering system. The evidence further showed that Teleflex had received numerous complaints of the problem, but chose not to warn customers of the issue, claiming that it wanted to avoid "mass hysteria." The jury found Teleflex liable for failing to warn its customers and awarded the decedent's father compensatory damages of $125,000 and punitive damages of $23,000,000.

On appeal, Teleflex argued that its conduct did not rise to the level of reprehensibility required to support an award of punitive damages and, alternatively, that the punitive damage award was excessive as a matter of federal maritime as well as constitutional law.[3]

Due process requires that a person receive fair notice of conduct that will subject him to punishment, as well as the severity of the penalty a state may impose.[4] The Louisiana Supreme Court considered several factors to determine whether the award against Teleflex violated due process.

The first factor, and the "most important indicium" of an award's reasonableness, is the degree of reprehensibility of the defendant's conduct.[5] Five specific considerations determine a defendant's reprehensibility: (1) whether the harm caused was physical as opposed to economic; (2) whether the conduct causing the plaintiff's harm showed indifference to or a reckless disregard of the health or safety of others; (3) whether the target of the conduct was financially vulnerable; (4) whether the defendant's conduct involved repeated actions as opposed to an isolated incident; and (5) whether the harm caused was the result of intentional malice, trickery, or deceit,

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[1] *See BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003).
[2] *Warren v. Shelter Mutual Ins. Co.,* No. 2016 –C–1647, 2017 WL 4737109 (La. 10/18/17).
[3] *Id.* at *16.
[4] *BMW of North America, Inc.*, 517 U.S. at 574.
[5] *Id.* at 575. ("Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct. As the Court stated nearly 150 years ago, exemplary damages imposed on a defendant should reflect 'the enormity of his offense'") (citing 54 U.S. 363 (1851)).

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or mere accident.[6] One factor weighing in a plaintiff's favor may not be sufficient to support a punitive damages award; the absence of all factors makes any such award "suspect."[7]

Applying this guide, the court found Teleflex's conduct sufficiently reprehensible to support a punitive damages award. The harm was physical, not economic, and Teleflex had failed to warn its customers despite knowledge of the serious risks. However, the court did not find that Teleflex targeted financially vulnerable customers or that its conduct involved repeated actions or "intentional malice, trickery or deceit."[8] Thus the evidence did not support a finding that the conduct was on the extreme end of "malicious behavior and dangerous activity carried on for the purpose of increasing a tortfeasor's financial gain" so as to justify an excessive award.[9]

The second factor the court considered was the ratio between the harm or potential harm to the plaintiff and the punitive damages award. Although there is no bright-line ratio that an award cannot exceed, the Louisiana Supreme Court has repeatedly held that single-digit ratios are "more likely to comport with due process" and those in excess of single-digits would raise "serious constitutional questions."[10] Thus, the court has typically refused to exceed a ratio of 9 to 1 when comparing punitive to compensatory damages.[11] Exceptions to this general rule include where a "particularly egregious act has resulted in only a small amount of economic damages" or where "the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine."[12] Additionally, under federal maritime common law and jurisprudence, punitive damages awards are subject to more rigorous standards than the constitutional limits. In *Exxon Shipping Co. v. Baker*, [13] the U.S. Supreme Court set a 1 to 1 ratio of punitive to compensatory damages in maritime cases where the compensatory damages are substantial and there are no earmarks of exceptional blameworthiness.

Under these factors, the court considered Teleflex's argument that the $23,000,000 punitive damage award as compared to the $125,000 compensatory damage, at a ratio of 184 to 1, was unconstitutionally excessive. It also considered the defendant's claim that the award was beyond the 1:1 ratio cap imposed under maritime law. In weighing the relationship between the actual harm caused and the punitive damages awarded, the court noted that the decedent's mother had settled prior to trial, and the $125,000 compensatory award reflected only the damages awarded to the decedent's father. So the court considered the compensatory damages that the decedent's mother could have received, approximately $2,000,000, in addition to the $125,000 received by the plaintiff, to bring the total compensatory damage award to $2,125,000.[14] This recalculation resulted in a 10.8 to 1 ratio, which the court noted was still beyond the single-digit limits of constitutional due process as well as *Exxon Shipping Co.*'s 1:1 ratio cap.[15] Thus, the court reduced the jury's award of punitive damages to $4,250,000, noting that the ratio of 2 to 1 "more appropriately furthers the goals of punitive damages, that is, to punish and to deter future conduct, while protecting the defendant's right to due process."[16]

The Louisiana Supreme Court's decision in *Warren* demonstrates its unwillingness to enforce outlier awards that grossly exceed the single-digit ratio standard. Although the court still refuses to place a defined cap on punitive damages, it continues to sharpen its analysis by providing lower courts criteria and specifying parameters to determine the constitutionality of such awards. Ultimately, the court's decision in *Warren* is a welcome step in the right direction towards uniformity and fairness.

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[6] *Campbell*, 538 U.S. at 419.
[7] *Ibid*.
[8] *Warren*, 2017 WL 4737109 at *21.
[9] *Ibid.*
[10] *Id*. at *18.
[11] *Ibid.*
[12] *Campbell*, 538 U.S. at 425.
[13] 554 U.S. 471 (2008).
[14] *Ibid.*
[15] *Ibid.*
[16] *Id.* at *23.

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