[NOTE: This opinion has been edited for use by students and teachers. For ease of reading, no indication has been made of deleted material and case citations. Any legal or scholarly use of this case should refer to the full opinion.]

BMW OF NORTH AMERICA, INC. v. GORE

517 U.S. 559 (1996)

Justice STEVENS delivered the opinion of the Court.

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." Mr. Slick, the proprietor, detected evidence that the car had been repainted. Convinced that he had been cheated, Dr. Gore brought suit against petitioner BMW of North America (BMW), the American distributor of BMW automobiles. Dr. Gore alleged, inter alia, that the failure to disclose that the car had been repainted constituted suppression of a material fact.[1] The complaint prayed for $500,000 in compensatory and punitive damages, and costs.

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 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. 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. 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.

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. The jury returned a verdict finding BMW liable for compensatory damages of $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.

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. 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.

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.*[2] Before the 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.

The trial judge denied BMW's post-trial motion, holding 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. 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. Having found the verdict tainted, the court held that "a constitutionally reasonable punitive damages award in this case is $2,000,000," and therefore ordered a remittitur in that amount. 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."

Because we believed that a review of this case would help to illuminate "the character of the standard that will identify constitutionally excessive awards" of punitive damages, we granted certiorari.

Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. 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. No one doubts that a State may protect its citizens by prohibiting deceptive trade practices and by requiring automobile distributors to disclose presale repairs that

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[2] 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.

affect the 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. Other States have enacted various forms of legislation that define the disclosure obligations of automobile manufacturers, distributors, and dealers.[3] The result is a patchwork of rules representing the diverse policy judgments of lawmakers in 50 States.

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.

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. But while we do not doubt that Congress has ample authority to enact such a policy for the entire Nation, it is clear that no single State could do so, or even impose its own policy choice on neighboring States.

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. 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. But by attempting to alter BMW's nationwide policy, Alabama would be infringing on the policy choices of other States. Alabama may insist that BMW adhere to a particular disclosure policy in that State. Alabama does not 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. Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions.

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

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[3] Four States require disclosure of vehicle repairs costing more than 3 percent of suggested retail price. An additional three States mandate disclosure when the cost of repairs exceeds 3 percent or $500, whichever is greater. Indiana imposes a 4 percent disclosure threshold. Minnesota requires disclosure of repairs costing more than 4 percent of suggested retail price or $500, whichever is greater. 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.

appropriately consider is properly limited, it is apparent – for reasons that we shall now address – that this award is grossly excessive.

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. 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 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 or imposed in comparable cases. We discuss these considerations in turn.

Degree of Reprehensibility

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." *Day v. Woodworth. [NOTE: The term "exemplary damages" is just another term for punitive damages]*. This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that "nonviolent crimes are less serious than crimes marked by violence or the threat of violence." Similarly, "trickery and deceit" are more reprehensible than negligence.

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, 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 that strong medicine is required to cure the defendant's disrespect for the law. Our 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.

In support of his thesis, Dr. Gore 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. Second, Dr. Gore maintains that BMW should have anticipated that its failure to disclose similar repair work could expose it to liability for fraud.

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. A review of the text of the statutes, 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. 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.

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.

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*. We accept, of course, the jury's finding that BMW suppressed 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.

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. The principle that exemplary damages must bear a "reasonable relationship" to compensatory damages has a long pedigree. Scholars have identified a number of early English statutes authorizing the 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. Our decisions in both *Haslip* and *TXO* endorsed the proposition that a comparison between the compensatory award and the punitive award is significant.

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. 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*.

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. 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 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.'" 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."

Sanctions for Comparable Misconduct

Comparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. The maximum civil penalty authorized by the Alabama Legislature for a violation of its Deceptive Trade Practices Act is $2,000; other States authorize more severe sanctions, with the maxima ranging from $5,000 to $10,000. 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.

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 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 by the Alabama Supreme Court in this case.

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

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.'" I do not regard the Fourteenth Amendment's Due Process Clause as a secret repository of substantive guarantees against "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.

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. [T]he 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 sanctions provided for comparable misconduct. 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," – a loophole that will encourage state reviewing courts to uphold awards as necessary for the "adequat[e] protect[ion]" of state consumers. 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," and that "trickery and deceit" are "more reprehensible than negligence." As to the ratio of punitive to compensatory damages, we are told that a "general concer[n] of reasonableness ... enter[s] into the constitutional calculus," -- though even "a breathtaking 500 to 1" will not necessarily do anything more than "raise a suspicious judicial eyebrow," 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." One expects the Court to conclude: "To thine own self be true."

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 controls on awards of punitive damages. I would therefore leave the state court's judgment undisturbed, and resist unnecessary intrusion into an area dominantly of state concern.

Alabama's Supreme Court reports that it "thoroughly and painstakingly" reviewed the jury's award 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*. Alabama's highest court could have displayed its labor pains more visibly, but its judgment is nonetheless entitled to a presumption of legitimacy.

The Court finds Alabama's $2 million award not simply excessive, but grossly so, and therefore unconstitutional. The decision leads us further into territory traditionally within the States' domain, and commits the Court, now and again, to correct "misapplication of a properly stated rule of law." The Court is not well equipped for this mission. Tellingly, the Court repeats that it brings to the task no "mathematical formula," no "categorical approach," no "bright line." It has only a vague concept of substantive due process, a "raised eyebrow" test as its ultimate guide. For the reasons stated, I dissent from this Court's disturbance of the judgment the Alabama Supreme Court has made.