No. 07-219

In the Supreme Court of the United States

EXXON SHIPPING CO. ET AL.,

Petitioners,

v.

GRANT BAKER ET AL.

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE AMERICAN PETROLEUM INSTITUTE, THE AMERICAN CHEMISTRY COUNCIL, THE AMERICAN TORT REFORM ASSOCIATION, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND THE WESTERN STATES PETROLEUM ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Amici will address the third question presented: whether the $2.5 billion punitive award is excessive.

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INTEREST OF THE AMICI CURIAE[1]

Amici are five associations (described with particularity in the Appendix) that collectively represent a broad swath of the American business community. Their members are regularly targeted with suits seeking massive amounts of punitive damages. Accordingly, *amici* have a strong interest in this Court's continued development of principles to control the imposition of excessive amounts of punitive damages.

Amici have a particularly strong interest in the third question on which review was granted—whether the punitive award against Exxon is excessive. Although the issue arises under maritime law, the Court's resolution of that issue can be expected to influence the lower courts' excessiveness analysis outside the maritime context. Accordingly, *amici* will endeavor to set forth in this brief a coherent approach to resolving excessiveness challenges that can be applied not just in this case, but in all cases raising an excessiveness issue.

SUMMARY OF THE ARGUMENT

The starting point for the analysis should be uncontroversial: ***A punitive award is excessive (whether under maritime law or otherwise) if it is greater than reasonably necessary to accomplish the governmental interests in deterrence and retribution***. This Court has both articulated and applied that principle repeatedly in its recent

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[1] Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

punitive damages cases. Moreover, this rule has deep roots in American common law. And it also makes perfect sense: A punitive award that exceeds the amount that is reasonably necessary to accomplish deterrence and retribution by definition serves no legitimate purpose, and an award that serves no valid purpose is necessarily excessive.

A number of considerations are generally pertinent to determining whether a punitive award exceeds the amount reasonably necessary to deter and punish. Although they may vary somewhat from case to case, the principal questions that courts should ask in most cases are:

- ***What is the conduct that is being punished?*** It is impossible to determine whether a punitive award exceeds the amount that is reasonably necessary to punish and deter without first clearly identifying the conduct that is being punished. In making that determination, courts should not simply accept the inferences that the plaintiff asked the jury to draw, as the Ninth Circuit did here. Instead, absent an express finding by the jury, courts should independently evaluate the evidence when identifying the punishable conduct. Here, for example, the Ninth Circuit's assumption that Exxon knowingly put a relapsed alcoholic in charge of a tanker in dangerous waters is untenable as a matter of both logic and evidence. The jury was permitted to impose punitive damages against Exxon if it found that ***Hazelwood*** was reckless, so there is no reason to suppose that it found anything more than that. But even putting this obvious flaw in the Ninth Circuit's analysis aside, the

only reasonable conclusion from the evidence is that Exxon was guilty of nothing more than entrusting Captain Hazelwood with command of the Exxon Valdez notwithstanding his diagnosis of "alcohol abuse–episodic."

- ***How wrongful was the conduct?*** This consideration entails determining the level of moral opprobrium that should attach to the defendant's conduct, placing particular weight on the defendant's state of mind. Here, for example the decision not to terminate an employee with a diagnosis of "alcohol abuse–episodic" was not morally repugnant. Tempting though it is to demonize Exxon because of the damage that befell Prince William Sound, Exxon did not deliberately contaminate that ecosystem; nor did it knowingly put that ecosystem at risk in a callous effort to save money. Objectively viewed, the decision to retain Captain Hazelwood, if wrongful at all, falls on the low end of the spectrum of reprehensibility—paling in comparison to virtually every other tort for which punitive damages are awardable. A $2.5 billion exaction cannot possibly be justified as necessary to punish and deter conduct that is this low on the reprehensibility spectrum.

- ***Who committed the conduct?*** Companies can act only through their employees and management. Yet a punitive award against a company is borne by its shareholders, its workforce, and ultimately consumers of its products or services. Hence, it is both misguided and counterproductive to treat the company itself as the wrongdoer whose con-

duct needs to be punished. The right question instead is: "What is the amount of punitive damages needed to deter the person(s) within the company who perpetrated the tortious conduct?" Here, the decision to retain Hazelwood was made by the president of Exxon Shipping. He may rank high in the corporate hierarchy, but there is little reason to think that a $2.5 billion exaction against the corporate parent's shareholders is necessary to change the conduct of the subsidiary's president.

- ***To what extent do compensatory damages, fines, and other costs borne by the defendant as a result of its conduct already satisfy the goals of deterrence and retribution?*** It is a matter of common sense—and has been recognized by this Court, other courts, and commentators—that conduct can be deterred and punished by means of compensatory damages, awards of attorneys' fees, fines, injunctions, and other costs (such as reputational harm) borne by a defendant as a result of its conduct. The present case is the best imaginable illustration of the point. Exxon incurred over $3.4 ***billion*** in damages, settlements, remediation costs, and fines as a result of the spill. It also took a massive reputational beating. When these costs of the decision to allow Hazelwood to continue commanding oil tankers are considered, the conclusion should be self-evident that anything more than a nominal amount of punitive damages exceeds the amount necessary to deter and punish.

- ***What penalties have the expert regulatory agencies determined to be appropriate to punish and deter the same or similar conduct?*** Another important indicium of whether a punitive award is greater than reasonably necessary to punish and deter is the penalties that expert regulatory agencies (and/or prosecutors) have imposed for the same or similar conduct. These agencies have the funding, expertise, investigative tools, knowledge of the law, and familiarity with the range of punishable conduct and with the consequences of overdeterrence to make a well-informed determination of the proper amount of punishment for particular conduct. Absent evidence of corruption or fraud on the agency, a punitive award that exceeds the fines imposed by the expert agencies (and/or prosecutors) for the same or similar conduct generally should be deemed to exceed the amount that is reasonably necessary to deter and punish. Here, the punitive damages set by the Ninth Circuit exceed the fines collectively agreed on and imposed by the United States and the State of Alaska by $2.375 billion. That is a compelling indication that the punitive award exceeds (by billions) the amount necessary to punish and deter.

- ***How does the punitive award compare to prior punitive awards for comparable or more egregious conduct?*** Courts also should compare the punitive award to exactions imposed for comparable or more egregious conduct. If a punitive award is materially higher than punishments for similar or more egregious conduct, that is a powerful indication

that it exceeds the amount necessary to punish and deter. That is certainly the case here. This punitive award is $1.3 billion greater than the prior record holder, which was imposed in a class action alleging kidnapping, torture, and murder.

- ***Is the punitive award disproportionate to the harm to the plaintiff(s)?*** This Court has consistently observed that, when compensatory damages are not "small," a punitive award that is a substantial multiple of the harm or potential harm to the plaintiff is presumptively excessive. *Amici* agree, but note that the converse is not necessarily true: Even if a punitive award is a small multiple or (even a fraction) of the harm to the plaintiff, the factors discussed above may still indicate that it is excessive. This case is a perfect example. A punitive award that is equal to the harm to the plaintiff class (as measured by the Ninth Circuit)—*i.e.*, $504.1 million—would still be excessive because such an exaction would far exceed the amount that is reasonably necessary to punish and deter, given the non-iniquitous nature of the conduct, the massive costs already borne by Exxon, the fines that state and federal prosecutors deemed appropriate, and other factors discussed above.

- ***If the tortfeasor is an individual, what is his or her financial condition?*** It is well accepted that it takes a higher punitive award to deter and punish a wealthy individual than to deter and punish an impecunious one. Accordingly, the wealth of an ***individual*** is a relevant factor. However, for reasons ex-

> plained in the brief of a different *amicus*, the same is not true for organizational defendants. Accordingly, Exxon's large net worth cannot justify the $2.5 billion exaction.

Unfortunately, the Ninth Circuit failed to consider most of the relevant factors. And the ones that it did consider, it misapplied. The root cause of its error was its failure to understand the ultimate inquiry—whether a more modest sanction would have achieved the governmental interests in retribution and deterrence. There can be only one answer to that question: A $2.5 billion exaction far exceeds the amount that is reasonably necessary to punish and deter under the circumstances of this case. Indeed, the costs already borne by Exxon ***independent of any punitive award*** more than accomplish those goals by themselves.

ARGUMENT

In addressing whether the $2.5 billion punitive award is excessive under federal maritime law, the Court will essentially be writing on a blank slate: This Court "has never affirmed an award of punitive damages in an admiralty case" (*Guevara* v. *Maritime Overseas Corp.*, 59 F.3d 1496, 1508 n.11 (5th Cir. 1995) (en banc)), much less discussed the standards for determining whether such an award is excessive. Nor is there much learning to be derived from the lower courts, because there are "very few" maritime cases actually awarding punitive damages. *Ibid.*; see also David W. Robertson, *Punitive Damages in American Maritime Law*, 28 J. MAR. L. & COM. 73, 162 (1997) ("[t]here are not all that many reported decisions in which punitive awards were actually made"). Among these "very few" cases, even fewer have addressed the amount of punitive damages, and

those that have are "uncertain precedent due to the historical circumstances of their decisions and the singular nature of their facts." Jill Rakoff Loxsom, *Admiralty*, 5 SUFFOLK TRANSNAT'L L.J. 251, 254-55 (1980).

Because there is essentially no law governing the circumstances under which a punitive award in the maritime context will be found to be excessive, the Court can and should look to cases and commentary addressing excessiveness in other contexts. See, *e.g.*, *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375, 388-93 (1970); 1 Steven F. Friedell, BENEDICT ON ADMIRALTY § 112, at 7-49 to 7-50 (7th rev. ed. 2007). These sources are useful in ascertaining not only a standard for excessiveness, but also the considerations relevant to that inquiry. As we explain in Section A, the standard is straightforward: A punitive award is excessive (whether under maritime law or otherwise) when it exceeds the amount that is reasonably necessary to satisfy the governmental interests in retribution and deterrence. And as we explain in Section B, a number of factors are useful in determining whether a particular punitive award is excessive in relation to the governmental interests in retribution and deterrence, virtually all of which compel the conclusion that the $2.5 billion punitive award in this case cannot stand.

A. A Punitive Award Is Excessive If It Is Greater Than Reasonably Necessary To Satisfy The Governmental Interests In Retribution And Deterrence.

The Ninth Circuit lost its bearings at the very beginning of its journey. Though tasked with determining whether the jury's punitive award (as modestly reduced by the district court) was excessive, the

court never asked the relevant question. Had it done so, it could never have come to the conclusion that a $2.5 billion punitive award is permissible under the circumstances of this case.

We submit that the inquiry is a straightforward one that applies whether the award is being challenged as excessive under maritime law, federal common law, state law, or the Due Process Clause. As this Court recognized almost 17 years ago, the question is "whether [the] particular award is greater than reasonably necessary to punish and deter." *Pac. Mut. Life Ins. Co.* v. *Haslip*, 499 U.S. 1, 22 (1991).

Since *Haslip*, the Court has twice invoked this standard, holding a $2 million punitive award to be unconstitutionally excessive in *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559 (1996), and a $145 million exaction to be unconstitutionally excessive in *State Farm Mutual Automobile Insurance Co.* v. *Campbell*, 538 U.S. 408 (2003).

The Court began its analysis in *BMW* by noting that "the federal excessiveness inquiry begins with an identification of the state interests that a punitive award is designed to serve"—"punishing [the defendant] and deterring it from future misconduct." 517 U.S. at 568. After exploring the relevant considerations, the Court ultimately concluded:

> 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 ques-

> tion whether a lesser deterrent would have adequately protected the interests of Alabama consumers.

Id. at 584.

In *State Farm*, the Court again emphasized that the legitimate purposes of punitive damages are "deterrence and retribution" (538 U.S. at 416) and went on to hold that "a more modest punishment for [the defendant's] reprehensible conduct could have satisfied the State's legitimate objectives, and the Utah courts should have gone no further" (*id*. at 419-20).

Though perhaps enjoying somewhat greater leeway, courts evaluating whether punitive awards imposed under federal statutes are excessive ask the same basic question. See, *e.g.*, *Allahar* v. *Zahora*, 59 F.3d 693, 696 (7th Cir. 1995) (an award of punitive damages under 42 U.S.C. § 1981 should be set aside "if it exceeds an amount necessary to achieve the objective of punishment and deterrence"); *Rowlett* v. *Anheuser-Busch, Inc.*, 832 F.2d 194, 206-07 (1st Cir. 1987) (same); *Gaffney* v. *Riverboat Servs. of Ind., Inc.*, 451 F.3d 424, 464 (7th Cir. 2006) (same under 46 U.S.C. § 2114), cert. denied, 127 S. Ct. 933 (2007); *Bogan* v. *Stroud*, 958 F.2d 180, 185 (7th Cir. 1992) (same under 42 U.S.C. § 1983).

Similarly, courts have engaged in this inquiry when evaluating punitive awards for excessiveness under state common law. See, *e.g.*, *DeRance, Inc.* v. *Painewebber Inc.*, 872 F.2d 1312, 1328 (7th Cir. 1989) (under Wisconsin law, "'we must reject the amount of a jury's award if it exceeds what was required to serve the objectives of deterrence and punishment'"); *Aldrich* v. *Thomson McKinnon Sec., Inc.*, 756 F.2d 243, 249 (2d Cir. 1985) ("[punitive] damages

should not be permitted to go beyond that amount reasonably necessary to secure the purposes of such awards, and thus to become in part a windfall to the individual litigant").

The same basic inquiry also has long determined when compensatory awards are excessive. See, *e.g.*, *Blunt* v. *Little*, 3 F. Cas. 760 (D. Mass. 1822) (Story, J.) (holding that courts have a duty to set aside "damages [that are] excessive in relation to the person or the injury"); *Read* v. *Reppert*, 190 N.W. 32, 36 (Iowa 1922) (ordering remittitur of $3,000 verdict to $2,000 because "damages in the amount of $2,000 would be sufficient to fully compensate plaintiff for the injury suffered"); *Nesselrode* v. *Executive Beechcraft, Inc.*, 707 S.W.2d 371, 386 (Mo. 1986) (en banc) ("awarding a plaintiff something in excess of just compensation constitutes an act falling outside the purpose of compensatory damages"); *Swain* v. *383 W. Broadway Corp.*, 216 A.D.2d 38, 38-39 (N.Y. App. Div. 1995) (remanding for new trial on damages because the jury's award "went beyond making plaintiff whole, amounting to a windfall").

Moreover, as a matter of first principles, this approach makes perfect sense: Whether punitive or compensatory, if a damages award goes beyond the amount necessary to serve the State's legitimate interests, it is by definition illegitimate and excessive. As we next discuss, that is precisely the case here.

B. Multiple Relevant Considerations Compel The Conclusion That $2.5 Billion Is Far More Than Needed For Retribution And Deterrence.

Because the Ninth Circuit never asked the right question—whether the punitive damages exceed the

amount reasonably necessary to punish and deter—it also failed to identify and apply the factors relevant to that inquiry. Instead, it simply sought to apply the three excessiveness "guideposts" identified by this Court in *BMW* (though essentially treating the third guidepost as a nullity). The *BMW* guideposts can be very useful ***if*** applied with the understanding that they are merely tools for helping determine whether a punitive award exceeds its legitimate purposes. But courts all too often treat them as an exclusive checklist, working through each guidepost without any apparent appreciation of the purpose for which these guideposts exist and without consideration of other constraining factors that may be pertinent. In short, the lower courts, including the Ninth Circuit, seem to be losing the forest for the trees.

This case affords the Court the opportunity to refocus the lower courts on the forest by clearly articulating and applying the factors that are relevant to determining whether a punitive award exceeds the amount reasonably necessary to punish and deter. These factors largely overlap the *BMW* guideposts, but are not limited by them. Indeed, although several of the relevant factors are implicit in this Court's prior decisions, the Court has not heretofore expressly instructed courts to consider them. Now is an opportune time to do so. Cf. *Philip Morris USA* v. *Williams*, 127 S. Ct. 1057, 1065 (2007). Moreover, the important thing is that these considerations not be applied with blinders on. The goal of determining whether "a more modest punishment * * * could have satisfied the State's legitimate objectives" (*State Farm*, 538 U.S. at 419-20) must always be kept firmly in mind.

In the balance of this brief, we set forth the considerations that bear on whether a particular punitive award exceeds the amount necessary to punish and deter and explain why these considerations compel the conclusion that the $2.5 billion exaction in this case is wholly unsustainable.

1. What is the conduct that is being punished?

Logically, the first step in the analysis should be to identify with specificity the conduct that is being punished. The Ninth Circuit "defined the relevant misconduct supporting punitive damages as Exxon's keeping Captain Hazelwood in command with knowledge of Hazelwood's relapse into alcoholism." Pet. App. 22a. But it based this determination on its speculation in its earlier opinion about what the jury ***might have*** found, not on what the jury necessarily or specifically did find, stating:

> The jury ***could*** infer from the evidence that Exxon knew Hazelwood was an alcoholic, knew that he had failed to maintain his treatment regimen and had resumed drinking, knew that he was going on board to command its supertankers after drinking, yet let him continue to command the *Exxon Valdez* through the icy and treacherous waters of Prince William Sound.

Id. at 89a (emphasis added).

When the question is whether a punitive award is excessive, however, it is neither sensible nor fair to assume that the jury accepted every inference urged upon it by plaintiffs' counsel. The jury's task in setting punitive damages is fundamentally different from its task in determining liability. The latter nec-

essarily requires the jury to find particular facts (specifically, the elements of the cause of action). By contrast, the jury's task in setting the amount of punitive damages does not typically involve determining whether any particular fact has been proven. This case is a perfect example. Having been instructed that it could hold Exxon liable for punitive damages based on Captain Hazelwood's conduct, the jury very likely reached no conclusion at all about Exxon's own conduct. Or, if it did, it may have believed that the only "misconduct" for which Exxon was directly (as opposed to vicariously) liable was the decision to allow Hazelwood to captain tankers notwithstanding his diagnosis of "alcohol abuse–episodic."[2]

Although the jury imposed a punitive award of $5 billion, that was at the ***low*** end of the $5 billion to $20 billion range suggested by plaintiffs' counsel. See JA1320. Thus, as in most punitive damages cases in which the plaintiff is allowed to pursue a wealth-based punishment, it is unjustified to assume from the size of the verdict that the jury accepted the various inferences, many with only the most modest foundation, urged upon it by plaintiffs' counsel. Its $5 billion verdict could mean nothing more than that, having been provided with a massive "anchor"—the range of punishments suggested by plaintiffs' counsel—it believed itself to be imposing modest

[2] *Amici* doubt that this judgment call, even if in retrospect mistaken, was punishable conduct at all but assume for purposes of argument that it was (much as this Court did in *BMW*).

punishment for an error in judgment that it considered to be of modest reprehensibility.[3]

Accordingly, we urge this Court to hold that, when conducting an excessiveness inquiry, reviewing courts should not take the facts in the light most favorable to the plaintiff and give the plaintiff the benefit of every conceivable non-frivolous inference. As the California Supreme Court has recognized, that would allow the award's size to "indirectly justify itself." *Simon* v. *San Paolo U.S. Holding Co.*, 113 P.3d 63, 70 (Cal. 2005). Instead, absent express findings by the jury (which would be reviewed under traditional sufficiency standards), reviewing courts should conduct an independent review of the evidence to determine what the punishable conduct was shown to have been. *Id.* at 72; cf. *Cooper Indus., Inc.* v. *Leatherman Tool Group, Inc.*, 532 U.S. 424, 439 n.12 (2001) (when conducting excessiveness review, courts must accept "***specific*** findings of fact" by the jury) (emphasis added).

Had the Ninth Circuit not deferred to findings that the jury "could" have made, it would have been hard pressed to conclude that Exxon had actual knowledge that Hazelwood "was going on board to command its supertankers after drinking" (Pet. App. 22a). Not only is the notion that Exxon would knowingly play Russian roulette with five bullets absurd on its face, but the evidence that supposedly supports this conclusion is exceptionally weak. As Exxon

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[3] Research establishes that juries often use the amount of punitive damages requested by the plaintiff as the starting point or "anchor" for their deliberations. Cass R. Sunstein *et al.*, PUNITIVE DAMAGES: HOW JURIES DECIDE 30, 32, 40, 62-74, 216-19 (2002).

explained in its opposition to the cross-petition (at 19), the only allegation that Hazelwood had been drinking on duty to reach the attention of Exxon management was investigated and found to be false.[4]

2. How wrongful was the conduct?

Once the reviewing court has identified the conduct that is being punished, the next task is to determine how wrongful that conduct was. This consideration equates with the first of the guideposts identified in this Court's due process cases—"the degree of reprehensibility" of the conduct (see *BMW*, 517 U.S. at 575)—and is "'deeply rooted and frequently repeated in common-law jurisprudence'" (*id.* at 575 n.24 (quoting *Solem* v. *Helm*, 463 U.S. 277, 284 (1983)).

In *State Farm*, this Court identified five (presumably non-exclusive) factors that are relevant to the reprehensibility inquiry. See 538 U.S. at 419. When applied with due consideration of the ultimate inquiry—whether the punitive award exceeds the amount reasonably necessary to punish and deter the conduct—these factors are helpful. Unfortunately, however, courts routinely treat them as a checklist, deciding how many are "satisfied" (or arguably "satisfied") and then using the resulting figure to rate the reprehensibility of the conduct. This

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[4] There was, evidently, some testimony that Exxon management knew that Hazelwood had consumed small amounts of alcohol on two occasions when his ship was in for repairs. But Hazelwood's diagnosis was "alcohol abuse–episodic," not "alcoholism." It is not a red flag that a person diagnosed with "alcohol abuse–episodic" (a description that applies to many perfectly functional adults) has had a drink or two while off duty. See Opp. to Cross-Pet. 17-21.

approach, which is exemplified by the decision below, often results in overstating the degree of reprehensibility of the conduct. In product-liability cases, for example, the first two *State Farm* factors are invariably present, and courts often find one or more of the remaining three factors to be present as well.[5] Yet the idea that every product-liability case in which punitive liability is found necessarily is one of high reprehensibility is self-evidently invalid.

We submit that the inquiry needs to be more nuanced. Courts should consider the five factors—as well as any other pertinent factors—as a whole. The goal of the inquiry should be to determine the level of moral opprobrium that should attach to the conduct. See *Day* v. *Woodworth*, 54 U.S. (13 How.) 363, 371 (1851) (the amount of punitive damages "depend[s] on * * * the degree of moral turpitude or atrocity of the defendant's conduct"). In making that determination, courts should give far more weight than they currently do to the defendant's state of mind—*i.e.*, whether the defendant acted out of malice or callousness, or instead merely exercised poor judgment

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[5] For example, some courts have held the third factor to be present because consumers are always financially vulnerable compared to product manufacturers, the fourth factor to be present because products with a design defect are sold to multiple consumers, and/or the fifth factor to be present because the product manufacturer knowingly chose the design instead of another design that allegedly would have avoided the accident. See, *e.g.*, *Maggard* v. *Ford Motor Co.*, 2007 WL 4255272, at *7 (M.D. Tenn. Nov. 30, 2007); *White* v. *Ford Motor Co.*, CV-N-95-0279-DWH, slip op. at 35-37 (D. Nev. Mar. 14, 2005), rev'd on other grounds, 500 F.3d 963 (2007); *Romo* v. *Ford Motor Co.*, 6 Cal. Rptr. 3d 793, 806 (Cal. Ct. App. 2003); *Udac* v. *Takata Corp.*, Civ. No. 02-1-0260, slip op. at 3 (Haw. Cir. Ct. Jul. 20, 2006).

(which is often characterized as recklessness to satisfy the standard for punitive liability).[6]

Retributive principles call for a more severe sanction for conduct that is the result of "intentional malice" (*State Farm*, 538 U.S. at 419) than for conduct that is not motivated by a desire to inflict harm. By the same token, if the defendant was animated by neither malice nor callousness, the obligation to pay compensatory damages should normally suffice to advance deterrence interests. Cf. *BMW*, 517 U.S. at 584-85 (because there was no evidence that the defendant had a "history of noncompliance with known statutory requirements"—*i.e.*, that it intentionally violated the law—a $2 million punitive award was not necessary for deterrence).

Of course, the inquiry is not binary. There are degrees of intentionality, and other factors may serve to make some conduct more reprehensible than conduct involving a similar level of intentionality. For example, a scheme to defraud multiple vulnerable senior citizens is more reprehensible than a fraud perpetrated during an arm's-length business transaction. Yet many courts simply apply the five reprehensibility factors and, if they find two or more satisfied, label the conduct "reprehensible" and move on to the next guidepost. By viewing the conduct in iso-

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[6] Here again, the reviewing court should not defer to "findings" that the jury did not actually make. Instead, the court must weigh the evidence relating to state of mind for itself. As this Court has explained in a different context, "[t]he strength of an inference [of scienter] cannot be decided in a vacuum"; courts must therefore "consider plausible nonculpable explanations for the defendant's conduct, as well as inferences favoring the plaintiff." *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2510 (2007).

lation rather than in comparison to other willful or wanton conduct, courts routinely overstate the degree of reprehensibility of the conduct. It is equivalent to treating violet light as if it had the highest frequency in the electromagnetic spectrum because we cannot see gamma rays. To perform this task accurately and fairly, it is necessary to place the conduct at issue on the broader spectrum of all punishable conduct. Only then is it truly possible to determine the magnitude of punishment that the defendant's conduct warrants.

The decision below is a good illustration of the errors courts make when undertaking the reprehensibility inquiry. It is bad enough that the Ninth Circuit strained to find the first, second, and fourth *State Farm* factors to be present. But what is worse is that it accorded little weight to what should be the most important factor: the presence or absence of an iniquitous state of mind. The simple, undeniable fact is that Exxon did not deliberately drive its tanker onto a reef in order to destroy the livelihoods of local fishermen. Nor was there any evidence that Exxon retained Hazelwood as a captain because it simply didn't care about Alaskans. Rather, Exxon's conduct (as opposed to that of Hazelwood himself) involved what at worst was a misguided decision to allow someone with the diagnosis of "alcohol abuse–episodic" to have command of a tanker.[7] But "[p]unitive damages are hardly necessary to punish

[7] Exxon explains in its brief (at 9-10) why firing anyone with such a diagnosis would discourage individuals from seeking treatment and thereby increase the risk of accidents. We endorse that view, but accept the contrary one for purposes of argument.

'thoughtlessness.'" *Moreno* v. *Consol. Rail Corp.*, 99 F.3d 782, 792 (6th Cir. 1996).

Although the courts below evidently were influenced by the severe damage that was done to the environment (and collaterally to the plaintiff class), they completely overlooked the fact that Exxon didn't intend any of this to happen. Its state of mind is not the sort to which fairly attaches any substantial degree of moral opprobrium.

Considered alongside other punishable conduct, surely this error in judgment (if it was that) falls on the low end of the reprehensibility spectrum. It is objectively less blameworthy than, *inter alia*, kidnapping, torture, and murder (*e.g.*, *Hilao* v. *Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996)); death threats and similar acts of physical intimidation (*e.g.*, *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949 (9th Cir. 2005), cert. denied, 547 U.S. 1111 (2006)); racial, ethnic, or religious discrimination and/or harassment (*e.g.*, *Williams* v. *ConAgra Poultry Co.*, 378 F.3d 790 (8th Cir. 2004); *Zhang* v. *Am. Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003)); a pattern of defrauding "elderly, uneducated, single black women" (*Life Ins. Co. of Ga.* v. *Johnson*, 701 So. 2d 524, 526-29 (Ala. 1997)); or deliberately failing to disclose a known, life-threatening defect in helicopter engines in order to foist the cost of remedying it onto the helicopter owners (*Barnett* v. *La Societe Anonyme Turbomeca France*, 963 S.W.2d 639 (Mo. Ct. App. 1997)). Indeed, it is hard to imagine conduct less iniquitous

than Exxon's that would still be subject to punitive damages.[8]

In short, contrary to the Ninth Circuit's conclusion, Exxon's conduct was not in the "mid range" of reprehensibility (Pet. App. 31a) merely because several of the *State Farm* factors were arguably present. As in *BMW*, "the extraordinary size of the award in this case is [not] explained by the extraordinary wrongfulness of the defendant's behavior," compelling the conclusion that there is a "severe lack of proportionality between the size of the award and the underlying punitive objectives" (517 U.S. at 595, 596 (Breyer, J., concurring)).

3. Who committed the conduct?

One factor that is insufficiently reflected by the three guideposts is the identity of the wrongdoer. It is a truism that companies and other organizations can act only through their employees and managers. Yet in the quest to maximize punitive damages, plaintiffs routinely portray the company as a monolith and suggest that the punitive exaction must be large enough to punish and deter that monolith. Reviewing courts often adopt the same fallacious perspective. The inevitable consequence is oversized punitive awards that are far greater than necessary to ensure that the conduct is not repeated.

Here, for example, it was not "Exxon" that decided to allow Hazelwood to remain in command of tankers. It was a single human being, Exxon Shipping's president Frank Iarossi, who made that judg-

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[8] And, of course, it must be remembered that Exxon paid mightily for its personnel decision even before a penny of punitive damages was assessed.

ment call.[9] True, he was a high-level executive. But that doesn't mean that a $2.5 billion exaction is necessary to punish for his decision. Indeed, the great irony of imposing punitive damages against a company is that they punish shareholders, innocent employees, and customers, but not the individual(s) who actually committed the tort. Cf. *City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 267 (1981) (declining to construe 42 U.S.C. § 1983 to allow for punitive damages against municipalities and observing that "an award of punitive damages against a municipality 'punishes' only the taxpayers, who took no part in the commission of the tort").

Similarly, an exaction of this magnitude is not necessary to deter Iarossi, or others in similar positions, from making misguided personnel decisions in the future. An executive like Iarossi is judged on the basis of the performance of the business unit for which he is responsible. When there is a catastrophic accident, like the one here, the damage to the company's bottom line from the loss of good will, the clean-up costs, the loss of the cargo, the damage to the vessel, crew down time, the compensatory damages, and the fines imposed by the state and federal authorities already means that the performance of his business unit will be miserable and that he will suffer commensurately. It doesn't take a large punitive award against the company to provide an adequate incentive for him or his successors to want to avoid making a similar bad judgment call in the future. See, *e.g.*, *Johansen* v. *Combustion Eng'g, Inc.*,

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[9] Insofar as shipmates of Hazelwood had knowledge that he drank while on duty and failed to report it, Exxon was a victim of that deception, not its perpetrator.

170 F.3d 1320, 1338 (11th Cir. 1999) (recognizing in environmental tort case that punitive award need only be large enough to "attract the attention of whomever is in charge of the corporation's daily decisions regarding environmental protection"); Lisa Litwiller, *From* Exxon *to* Engle: *The Futility of Assessing Punitive Damages As Against Corporate Entities*, 57 RUTGERS L. REV. 301, 325-30 (2004) (large punitive damages awards often "overdeter[] corporate actors" in part because the culpable individuals "may no longer be affiliated with the company, and the employees working for the company at the time of the award may well be those who have corrected the harm of which the plaintiffs complain").[10]

4. To what extent do compensatory damages, fines, and other costs borne by the defendant as a result of its conduct already satisfy the goals of deterrence and retribution?

Another consideration that is not adequately encompassed within the three guideposts is the extent to which the compensatory damages, fines, and other costs (*e.g.*, awards of attorneys' fees and injunctive relief) borne by the defendant as a result of its conduct already satisfy the goals of deterrence and retribution. It is a matter of common sense that, from the defendant's perspective, any obligation to pay money—no matter how denominated—is going to

[10] Professor Litwiller analyzed empirical data concerning awards against corporations. She concluded that, when "punitive awards are assessed against corporate entities, the human constituents responsible for the corporate misconduct typically escape any consequences; rather, the consequences are borne by the shareholders, the consumers, and ultimately, the economy itself." *Id.* at 344.

have a punitive and deterrent effect. And that is all the more true when, as here, the conduct being punished was not calculated to, and did not, provide an economic benefit to the defendant.

That compensatory damages and awards of attorneys' fees can have deterrent and punitive effects has been recognized by this Court,[11] by other courts,[12] and by commentators.[13] Indeed, this Court

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[11] See, *e.g.*, *Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 307 (1986) ("[d]eterrence * * * operates through the mechanism of damages that are *compensatory*") (emphasis in original); *Smith* v. *Wade*, 461 U.S. 30, 94 (1983) (O'Connor, J., dissenting) ("awards of compensatory damages and attorney's fees already provide significant deterrence").

[12] See, *e.g.*, *Glynn* v. *Roy Al Boat Mgmt. Corp.*, 57 F.3d 1495, 1505 (9th Cir. 1995) (disallowing punitive damages in maritime case because "[t]he threat of liability for attorney's fees adequately serves to deter recalcitrance" and "[p]unitive damages, in addition to attorney's fees, are thus not needed to provide a powerful incentive for shipowners to investigate and pay promptly"); *Allahar*, 59 F.3d at 697 (awards of $10,000 in compensatory damages and $20,000 in attorneys' fees were "highly punitive to a person of modest means" and would "likely provide 'adequate condemnation, punishment and deterrence to any else of like inclination'"); *Rowlett*, 832 F.2d at 206-07 (reducing punitive award from $3 million to $300,000, because "[t]he large compensatory damage award [of $299,999], by itself, provides significant deterrence, even to employers as large as [defendant]"); *Rosado* v. *Santiago*, 562 F.2d 114, 121 (1st Cir. 1977) (reversing punitive award because "[a]n award of actual damages coupled with reinstatement * * * is ample relief * * * and a sufficient deterrent to future wrongdoing"); *Pichler* v. *UNITE*, 457 F. Supp. 2d 524, 530-32 (E.D. Pa. 2006) (disallowing punitive damages for willful and reckless violation of the Driver's Privacy Protection Act because statutory damages of over $4 million and other fees and costs would provide "ampl[e]" punishment and deterrence "without imposing punitive damages"); *Lane* v. *Hughes Aircraft Co.*, 993 P.2d 388, 400 (Cal.

implicitly recognized this point in *State Farm*, explaining that "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." 538 U.S. at 419. If the amount of compensatory damages (and other costs borne by the defendant) should be taken into account in determining whether punitive damages should be permitted at all, it follows that they also should be considered when determining whether the amount imposed is excessive in relation to the government's legitimate deterrent and retributive purposes.

So too should the adverse reputational effects of a highly publicized tort. It is undeniable that businesses depend on having a favorable public image. Hence, the tarnishing of a business's image as a re-

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2000) (Brown, J., concurring) ("[L]arge compensatory damage awards not based on a defendant's ill-gotten gains have a strong deterrent and punitive effect in themselves."); *Daka, Inc.* v. *McCrae*, 839 A.2d 682, 701 n.24 (D.C. 2003) (because substantial attorneys' fees include "'a certain punitive element[,]'" they "favor[] a lesser rather than greater award of punitive damages").

[13] 1 Dan B. Dobbs, LAW OF REMEDIES § 3.1, at 282 (2d ed. 1993) ("[e]ven if the defendant is not subject to punitive damages, an ordinary compensatory damages judgment can provide an appropriate incentive to meet the appropriate standard of behavior"); Gary T. Schwartz, *Deterrence and Punishment in the Common Law of Punitive Damages*, 56 S. CAL. L. REV. 133, 137 (1982) ("ordinary civil damages—in the course of providing compensation—concurrently function to deter"); Clarence Morris, *Punitive Damages in Tort Cases*, 44 HARV. L. REV. 1173, 1182 (1931) ("if the 'compensatory' damages are large, the defendant is severely admonished without the addition of any punitive damages").

sult of its involvement in an environmental disaster or some other tort itself has both punitive and deterrent effects. See Steven Shavell, *On the Proper Magnitude of Punitive Damages*: Mathias v. Accor Economy Lodging, Inc., 120 HARV. L. REV. 1223, 1226 (2007) ("nonlegal economic incentives," including reputational injury, may "significantly reduce the need for punitive damages to achieve deterrence").

If ever there were a case in which the compensatory damages, fines, other costs, and reputational effects fully sufficed to accomplish the governmental interests in retribution and punishment, it is this one. Even without punitive damages, Exxon already has paid more than $3.4 ***billion*** in damages, settlements, fines, and remediation costs. Pet. App. 100a. It also suffered massive damage to its corporate reputation. These costs—for conduct that was the product of neither malice nor callousness—already far exceed what is necessary to punish Exxon and to deter it and others from making similar errors of judgment in the future. Indeed, that is so even if the Court accepts the assumption that Exxon knew that Hazelwood was a relapsed alcoholic.

Ironically, the Ninth Circuit recognized this point in its original opinion. It observed that, "if a person ruined a $10,000 rug by spilling a $5 bottle of ink, he would be exceedingly careful never to spill ink on the rug again, even if it cost him 'only' $10,005 and he was not otherwise punished." *Ibid.* Similarly, "[a] company hauling a cargo worth around $25.7 million has a large incentive to avoid a $3.4 billion expense for the trip." *Ibid.* Accordingly, it concluded, "[t]his case is like the ink on the rug example * * *. Just the expense, ***without any punishment***, is too large for a prudent transporter to

take much of a chance, given the low cost of making sure alcoholics do not command their oil tankers." *Ibid.* (emphasis added).

In this round, however, the Ninth Circuit completely ignored this critically important and manifestly valid point. That failure led it to authorize an exaction that serves no legitimate purpose whatever. Because the economic and reputational consequences of the grounding already more than adequately serve the interests of deterrence and retribution, nothing more than a nominal amount of punitive damages should be considered permissible.

5. What penalties have the expert regulatory agencies determined to be appropriate to punish and deter the same or similar conduct?

An exceptionally valuable data point in determining whether a punitive award exceeds the amount reasonably necessary to punish and deter is the penalties that the relevant governmental agencies have imposed for the same or similar conduct (a consideration that is similar but not identical to the third *BMW* guidepost). After all, in administering a statutory scheme that provides penalties for regulatory violations, governmental agencies are charged with choosing the penalty that, under the circumstances, best advances the government's interests in punishment and deterrence (and by the same token avoids overpunishment and overdeterrence). What is more, unlike a civil jury, regulatory agencies have the time, expertise, specialized personnel, investigative resources, knowledge of the statutory scheme and regulatory background, understanding of the range of punishable conduct, and historical perspective to perform a full and impartial evaluation and to

"'assure the uniform general treatment of similarly situated persons that is the essence of law itself'" (*Cooper Indus.*, 532 U.S. at 436 (quoting *BMW*, 517 U.S. at 587 (Breyer, J., concurring))).

It follows that when an expert regulatory agency (or prosecutor) has set or reached an agreed-upon fine for the very conduct that is the subject of a civil suit for punitive damages, a punitive award that materially exceeds the regulatory or criminal fine should be treated as presumptively excessive: If an expert regulator didn't think that a higher punishment was necessary or appropriate, a single civil jury should not be able to override that determination.[14] As Justice Breyer has put it in the context of federal preemption, it is "anomalous" to "grant greater power * * * to a single state jury than to state officials acting through state administrative or legislative lawmaking processes." *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 504 (1996) (Breyer, J., concurring).

Of course, it is comparatively rare that a civil defendant will have actually been fined for its conduct.[15] When the defendant itself has not been fined, reviewing courts should consider the fining practice of the relevant agency more broadly. This inquiry should include both the full range of penalties that the agency has imposed during the relevant time frame and, more importantly, the penalties imposed

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[14] The presumption could be overcome by compelling proof of fraud on the agency, bribery, or some other basis for concluding that the penalty set by the agency is an undependable measure of the amount necessary to punish and deter.

[15] If an expert agency has investigated the conduct and decided not to bring an enforcement action, that is highly relevant to the reprehensibility inquiry.

for the most closely analogous conduct.[16] If the punitive award is materially higher than the fines that the agency has imposed for comparable conduct, that is a compelling indication that the award is excessive.

The maximum penalties that hypothetically could be imposed under the governing statute are a far less useful and relevant benchmark. That is because the maximum penalty is reserved for the worst possible conduct, and it is seldom realistic to assume that the expert agency would impose such a penalty—especially in cases in which the agency has not sought to penalize the defendant at all. As the Eleventh Circuit has explained:

> If a statute provides for a range of penalties depending on the severity of the violation, * * * it cannot be presumed that the defendant had notice that the state's interest in the *specific* conduct at issue in the case is represented by the maximum fine provided by the statute. * * * For example, if the defendant had emptied a bottle of soda pop into a Georgia stream, it cannot reasonably be said that he was on notice [that] he could be fined $100,000.

Johansen, 170 F.3d at 1337 (emphasis in original; footnote omitted).[17]

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[16] Many agencies post the fines they have imposed in recent years on their web sites. See, *e.g.*, EPA, *Regional Newsrooms*, http://www.epa.gov/newsroom/newsrooms.htm.

[17] For a vivid example of why it is inappropriate to consider the theoretical maxima instead of realistic statutory fines, see *Pearson* v. *Chung*, No. 05-CA-4302-B (D.C. Super. Ct. June 25, 2007), in which the plaintiff sought up to $67 million under

Here, of course, there were actual criminal fines. Pursuant to a plea agreement, Exxon paid $25 million in fines (reduced from $150 million because of Exxon's laudatory remediation efforts) and $100 million in restitution for violations of the Clean Water Act. Pet. App. 103a. Although this Court has admonished against using the existence of criminal penalties to justify a high punitive award out of concern about the absence of criminal safeguards in a civil trial (*State Farm*, 538 U.S. at 428), there should be no similar qualms about using the amount of a criminal fine to establish that a punitive award vastly exceeding that goes beyond what the executive branch has determined to be necessary to punish and deter. In fact, at the sentencing hearing, representatives of both the United States and Alaska affirmatively argued that the agreed-upon penalty adequately served the governmental interests in punishment and deterrence. JA1520-21, 1531-33.

The punitive award in this case is $2.375 ***billion*** greater than the $125 million in penalties that the United States and Alaska deemed to be sufficient to punish and deter. It also exceeds by $2.417 ***billion*** the highest civil penalty that EPA ever has imposed.[18]

D.C.'s Consumer Protection Procedures Act for a dry cleaner's loss of his pants on the theory that each day the pants were missing was a separate statutory violation for which the maximum penalty could be imposed. Quite obviously, a $67 million penalty for lost pants is not realistic and would be excessive were it imposed.

[18] See http://cfpub.epa.gov/compliance/resources/reports/endofyear/fy2007/airhighlights/#1236 ($83.4 million civil penalty against seven diesel engine manufacturers is "largest in environmental enforcement history").

The Ninth Circuit brushed off these disparities, explaining that, when applying the third *BMW* guidepost, it "look[s] only to whether or not the misconduct was dealt with seriously under state civil or criminal laws." Pet. App. 41a.[19] That dismissive assertion, which finds no support in this Court's precedents, confirms once again that the Ninth Circuit failed to ask the right question—whether "a more modest sanction would * * * have been sufficient" to serve the governmental interests in deterrence and retribution (*BMW*, 517 U.S. at 585).

For their part, respondents contend that the informed conclusion of the United States and Alaska as to what is necessary to punish and deter should be given no weight because the possible criminal penalties were higher than the fine actually imposed. See Br. in Opp. 28 ("federal criminal penalties for the three crimes to which Exxon pleaded guilty could have exceeded $3 billion"). But respondents offer no basis for thinking that those hypothetical criminal penalties were realistic here. In fact, actual fining practice proves that they aren't. See JA54 (net sentence of $125 million exceeded the total of all fines previously imposed by the United States in environmental cases). Indeed, it is precisely this kind of misuse of criminal sentencing statutes against which this Court cautioned in *State Farm*. See 538 U.S. at 428.

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[19] As we pointed out in our *amicus* brief in support of the petition for certiorari (at 18-19 & n.11), the Ninth Circuit, unfortunately, is hardly alone in this respect.

6. How does the punitive award compare to prior punitive awards for comparable or more egregious conduct?

A plurality of this Court has recognized that "the fact that an award is significantly larger than those in apparently similar circumstances might, in a given case, be one of many relevant considerations." *TXO Prod. Corp.* v. *Alliance Res. Corp.*, 509 U.S. 443, 458 (1993). That makes perfect sense. To be sure, "no two cases are truly identical," and "meaningful comparisons * * * are difficult to make." *Id.* at 457. Nevertheless, when a punitive award is materially higher than the amounts that other courts and juries have imposed for conduct that is similar to or more egregious than the conduct at issue, that should raise questions about whether the amount imposed really is justifiable for retributive and deterrent purposes. The punitive award here is the highest ever. It exceeds the next highest, which was imposed against the Marcos regime for kidnapping, torturing, and killing thousands of people, by ***$1.3 billion***. See *Hilao*, *supra*. Needless to say, no punitive award for non-malicious conduct comes close to this one.

The comparison with awards in other cases thus establishes not only that the exaction here far exceeds the amount necessary to punish and deter but also that Exxon has been denied "'the uniform general treatment of similarly situated persons that is the essence of law itself'" (*Cooper Indus.*, 532 U.S. at 436).

7. Is the punitive award disproportionate to the harm to the plaintiff(s)?

"The principle that exemplary damages must bear a 'reasonable relationship' to compensatory

damages has a long pedigree." *BMW*, 517 U.S. at 580. Indeed, it is perhaps the "most commonly cited indicium of an unreasonable or excessive punitive damages award." *Ibid.*

When the compensatory damages are not "small," a high ratio of punitive to compensatory damages usually indicates that the exaction is greater than reasonably necessary to deter and punish.[20] But the converse is not necessarily true. A punitive award that is a small multiple of the compensatory damages may still materially exceed the amount necessary to punish and deter.

This case emphatically proves the point. As the discussion above demonstrates, not only is a $2.5 billion exaction (and 5:1 ratio) unnecessary to advance the interests of deterrence and retribution, but so too would be a punitive award of the same size as the compensatory damages—roughly $500 million. Indeed, as too few courts have recognized (notwithstanding this Court's strong hint in *State Farm*), the higher the compensatory damages and the greater the extent to which they outstrip any ill-gotten gain, the less the need for additional deterrence and punishment. Hence, there will be many cases in which treating a modest ratio as a safe harbor—as the Ninth Circuit implicitly did here—will result in upholding punitive awards that go far beyond their legitimate purposes.

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[20] It also is an important indication that the defendant lacked fair notice that it could be mulcted to this extent, which is relevant to the due process inquiry.

8. If the tortfeasor is an individual, what is his or her financial condition?

As the Court is no doubt aware, there is a raging debate about whether a defendant's financial condition is a relevant consideration in determining whether a punitive award is excessive. Indeed, we expect that respondents will defend the $2.5 billion exaction in this case on the ground that it is not large in relation to Exxon's finances. Financial condition is indeed highly relevant when the defendant is an individual committing a non-economic tort: A higher award is needed to punish and deter Bill Gates than to punish and deter his secretary. But the same logic does not apply to organizations. Because we understand that the Product Liability Advisory Council ("PLAC") will be discussing this topic at length, we will not address it further here other than to agree with Exxon and PLAC that Exxon's financial condition cannot justify the punitive award.

* * *

In sum, the relevant considerations compel the conclusion that a $2.5 billion exaction is far more than reasonably necessary to punish and deter. Indeed, given the enormous amounts that Exxon already has paid in compensatory damages, settlements, fines, and remediation costs (as well as the significant reputational harms that Exxon has suffered), no more than nominal punitive damages can be justified here.

CONCLUSION

The Court should vacate the punitive award and instruct the Ninth Circuit to reduce it to a nominal amount.

Respectfully submitted.

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APPENDIX

The American Petroleum Institute is a nationwide, non-profit, trade association that represents over 400 members engaged in all aspects of the petroleum and natural gas industry.

The American Chemistry Council represents the leading companies engaged in the business of chemistry, a $635 billion enterprise that accounts for ten cents of every dollar in U.S. exports.

The American Tort Reform Association ("ATRA") is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms. ATRA's core purpose is to promote fairness, balance, and predictability in civil litigation.

The National Association of Manufacturers ("NAM") is the nation's largest industrial trade association, representing manufacturers in every industrial sector and in all 50 states. NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth.

The Western States Petroleum Association is a non-profit trade association that represents approximately two dozen companies that explore for, develop, produce, refine, market, and transport petroleum and petroleum products in the six western States of Arizona, California, Hawaii, Nevada, Oregon, and Washington.