



## Florida Torts

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VI. REMEDIES  
CHAPTER 113 PUNITIVE DAMAGES  
I. LEGAL BACKGROUND

B. Determining the Amount of Punitive Damages That May Be Awarded

4-113 Florida Torts § 113.23

**§ 113.23 Constitutional Limitations on Award**

The United States Supreme Court has ruled that the excessive fines clause of the Eighth Amendment to the United States Constitution does not limit an award of punitive damages in private civil actions. That clause is applicable only if the government has prosecuted the action or has a right to receive a share of the damages awarded. The Court interpreted the term "fine" as indicative that the amendment was intended to apply only as a limit on monetary sanctions imposed by the government. It further found that the Eighth Amendment was specifically adopted to place limits on the powers of the government, and not because of concerns with respect to limiting civil damages in private actions [ *Browning-Ferris v. Kelco Disposal*, 492 U.S. 257, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989) (antitrust case)].

Although the excessive fines clause does not apply, the United States Supreme Court has ruled that an award of punitive damages must be reasonable and a court must provide adequate guidance to the jury regarding the nature and purpose of punitive damages to help ensure that any punitive damages awarded are reasonable [ *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18-24, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991)] .

The Due Process Clause of the United States Constitution imposes substantive limits on an award of punitive damages. In this regard, a particular punitive damages award may be so grossly excessive as to violate the Due Process Clause. However, there is no test that can draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. Rather, the courts must approach each case with a general concern of reasonableness [ *see BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809, 833 (1996) ; *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S. Ct. 2711, 125 L. Ed. 2d 366 (1993)] .

A punitive damage award should generally bear some proportion to the real damages sustained [ *compare TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 454, 113 S. Ct. 2711, 125 L. Ed. 2d 366 (1993) (judgment awarding \$19,000 in actual damages and \$10 million in punitive damages did not violate the Due Process Clause in light of the defendant's pattern of behavior that could potentially cause millions of dollars in damages to other victims, amount of money actually at stake in case, and defendant's bad faith and great wealth); *with BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809, 833 (1996) (judgment awarding \$4,000 in compensatory damages and (on remittitur) \$2 million in punitive damages held unconstitutional excessive given insufficient evidence that defendant's behavior was egregious enough to support such a large award)]. However, that relationship is only one of several factors that a court must consider in determining the reasonableness of the award. The court must take into account the wealth of the defendant. Another important factor is the potential harm that might result from the defendant's conduct. In other words, punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that has actually occurred. Finally, a court should consider the possible harm to other victims that may result if similar future behavior is not deterred [ *see TXO Prod. Corp. v. Alliance Resources Corp.*, 509

U.S. 443, 113 S. Ct. 2711, 125 L. Ed. 2d 366 (1993)] .

The United States Supreme Court has also set out three guideposts for determining whether or not an award meets elementary notions of fairness dictating that fair notice be given regarding the severity of punishment that may be imposed for tortious conduct. These guideposts are: (1) the degree of reprehensibility of the conduct; (2) the disparity between the harm or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between that remedy and the civil penalties authorized or imposed in comparable cases [ *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 1599-1603, 134 L. Ed. 2d 809, 826 (1996)] . In setting forth these guidelines, though, the Court again emphasized its rejection of any categorical approach, and with it any "mathematical bright line" between the constitutionally acceptable and the constitutionally unacceptable that would fit every case [ *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 1604, 134 L. Ed. 2d 809, 833 (1996)] .

Applying the federal guidelines, the Fifth District ruled that a punitive damages award of \$333,000 in a civil rights action for false arrest against an individual, in which the plaintiff spent one night in jail and received no physical injuries, was excessive [ *St. John v. Coisman*, 799 So. 2d 1110, 1114-1115 (Fla. 5th DCA 2001)] .

In addition to these general guidelines, the United States Supreme Court has also held that a court may not impose economic sanctions on violators of its laws with the intent of charging the tortfeasors' lawful conduct in other states. A state does not have the power to punish a defendant for conduct that was lawful where it occurred, and that had no impact on the state or its residents [ *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 1604, 134 L. Ed. 2d 809, 824 (1996) (punitive damages award cannot be supported by evidence of conduct in other states that, though unlawful in jurisdiction in which action was brought, was not unlawful in those other states)] .

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