

alty imposed for the contempt, but merely a reasonable method for sustaining the effectiveness of the state's judicial process.<sup>974</sup>

To deter careless destruction of human life, a state may allow punitive damages to be assessed in actions against employers for deaths caused by the negligence of their employees,<sup>975</sup> and may also allow punitive damages for fraud perpetrated by employees.<sup>976</sup> Also constitutional is the traditional common law approach for measuring punitive damages, granting the jury wide but not unlimited discretion to consider the gravity of the offense and the need to deter similar offenses.<sup>977</sup> The Court has indicated, however, that, although the Excessive Fines Clause of the Eighth Amendment “does not apply to awards of punitive damages in cases between private parties,”<sup>978</sup> a “grossly excessive” award of punitive damages violates substantive due process, as the Due Process Clause limits the amount of punitive damages to what is “reasonably necessary to vindicate the State’s legitimate interests in punishment and deterrence.”<sup>979</sup> These limits may be discerned by a court by examining the degree of reprehensibility of the act, the ratio between the punitive award and plaintiff’s actual or potential harm, and the legislative sanctions provided for comparable misconduct.<sup>980</sup> In addi-

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<sup>974</sup> *National Union v. Arnold*, 348 U.S. 37 (1954) (the judgment debtor had refused to post a supersedeas bond or to comply with reasonable orders designed to safeguard the value of the judgment pending decision on appeal).

<sup>975</sup> *Pizitz Co. v. Yeldell*, 274 U.S. 112, 114 (1927).

<sup>976</sup> *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991).

<sup>977</sup> *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) (finding sufficient constraints on jury discretion in jury instructions and in post-verdict review). *See also* *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994) (striking down a provision of the Oregon Constitution limiting judicial review of the amount of punitive damages awarded by a jury).

<sup>978</sup> *Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 257, 260 (1989).

<sup>979</sup> *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996) (holding that a \$2 million judgment for failing to disclose to a purchaser that a “new” car had been repainted was grossly excessive in relation to the state’s interest, as only a few of the 983 similarly repainted cars had been sold in that same state); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (holding that a \$145 million judgment for refusing to settle an insurance claim was excessive as it included consideration of conduct occurring in other states). *But see* *TXO Corp. v. Alliance Resources*, 509 U.S. 443 (1993) (punitive damages of \$10 million for slander of title does not violate the Due Process Clause even though the jury awarded actual damages of only \$19,000).

<sup>980</sup> *BMW v. Gore*, 517 U.S. at 574–75 (1996). The Court has suggested that awards exceeding a single-digit ratio between punitive and compensatory damages would be unlikely to pass scrutiny under due process, and that the greater the compensatory damages, the less this ratio should be. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. at 424 (2003).