



Punitive Damages

by John D. Whitaker

Well, one could say that if Job lived in Alaska, after reading the United States Supreme Court's decision in *Baker vs. Exxon* you could imagine him saying, "The Lord gave and the Lord has taken away." The Supreme Court has decided that Exxon need not pay anywhere near the \$5 billion punitive damages award ordered by the Alaska trial court after the Exxon Valdez wrecked in Prince William Sound spilling 11 million gallons of crude oil into one of the most beautiful and ecologically sensitive places on earth. The \$5 billion in punitive damages awarded at the trial court level was reduced to \$2.5 billion when the case was appealed to the 9th Circuit Court of Appeals. That decision also was appealed, and the United States Supreme Court just decided that the damages should be reduced to a mere \$500 million. Petty cash to a company with profits of \$40 billion annually. This ruling imposes of penalty roughly equal to the profit Exxon makes in 4.5 days.

Let's be clear about what punitive damages are designed to do. Punitive damages are designed to punish wrongdoers and to deter potential future wrongdoers. They are not designed to compensate the victims. Punitive damages are an implement of public policy which allows juries to punish reckless behavior.

When you file a suit against someone for damages, the jury is asked to evaluate your loss. That is, what amount of money is necessary to compensate you for what you lost as the result of the defendant's wrongful conduct? If the defendant backed his car over your fence, the damage question is how much will it cost to repair your fence. These damages are called compensatory damages because they are designed to compensate you.

The focus of punitive damages is entirely different. They



are designed to punish the defendant. They are not available in the ordinary negligence context, but require some element of outrage similar to that found in a crime. The standard requires some element of recklessness or intentional conduct. For example, suppose your son is riding his bicycle down the sidewalk and is momentarily distracted by a cool car driving down the street. He plows into his sister's lemonade stand and she skins her knee. His conduct would be considered negligent. Punitive damages would not be available, but he is responsible for the skinned knee and spilled lemonade. Now suppose that you find that immediately before the crash, he smoked a marijuana cigarette and that he was too stoned to keep control over his bike and that this was a factor in causing the crash. His conduct could be considered reckless. Punitive damages could be awarded in this case. Clearly, if he intentionally tried to hurt his sister punitive damages could also be awarded.

In the Exxon case, the jury found that Exxon knew that the captain of the ship had a history of alcohol abuse, yet they gave him the keys to the ship. Inexplicably, he left bridge leaving a tricky course correction to an unlicensed subordinate right before the wreck. Eleven hours after the wreck, he still had a high blood alcohol level. The jury found that this was evidence of recklessness, and awarded punitive damages. Back to your son's case, if you want to punish him for recklessness or intentionally bad conduct you could give his \$5-weekly allowance to his sister for a month. This might get his attention. If you just cut his allowance by a nickel for one week, you are not likely to get his attention for long, if at all. When a company makes as much money as Exxon, \$500 million is chump change. The punitive damages Exxon must pay will not cause the company much heartburn. In fact, it is so minimal that it may not even show up on the annual report. That will teach them!

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jw@wyoinjury.com or by calling his office in Casper at 265-6204.