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Instructing Juries on Punitive Damages: Due Process Revisited After State Farm

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ARTICLES

INSTRUCTING JURIES ON PUNITIVE DAMAGES: DUE PROCESS REVISITED AFTER STATE FARM

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INTRODUCTION

A jury recently awarded a single plaintiff $28 billion in punitive damages.¹ That’s billion, as in nine zeros—all to one person. Given the frequent reports of multimillion dollar verdicts,² it is easy to become desensitized to “skyrocketing”³ punitive damages awards. But

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² See, e.g., Tresa Baldas, Verdicts Swelling from Big to Bigger, NAT'L L.J., Nov. 25, 2002, at A1 (reporting recent punitive damages verdicts of $28 billion, $3 billion, $290 million, and $271 million); David Hechler, Tenfold Rise in Punitives, NAT'L L.J., Feb. 3, 2003, at C3 (“There were five verdicts of at least $500 million and 22 of at least $100 million [in 2002] . . . . In 1991, 38 verdicts topped $20 million; in 1996, it was 66.”).

³ Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 282 (1989) (O’Connor, J., concurring in part and dissenting in part) (“Awards of punitive damages are skyrocketing. As recently as a decade ago, the largest award of punitive damages affirmed by an appellate court in a products liability case was $250,000. Since then, awards more than 30 times as high have been sustained on appeal.” (citation omitted)); accord, e.g., CASS R. SUNSTEIN ET AL., PUNITIVE DAMAGES: HOW JURIES DECIDE 1 (2002) (“Over the past two decades, our country has experienced a dramatic increase in the incidence and magnitude of punitive damages verdicts rendered by juries in civil litigation.”)). Others are quick to counter, however, that research on the overall patterns of awards indicate that juries impose punitive damages infrequently and rarely in headline-grabbing amounts. See Brief Amici Curiae of Certain Leading Social Scientists and Legal Scholars in Support of Respondents at 1, State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S. Ct. 1513 (2003) (No. 01-1289) [hereinafter Research Amici Brief] (“A broad social science consensus exists that juries perform rationally in punitive damages cases. Juries award such damages infrequently and in comparatively modest amounts.”); see also Jennifer K. Robbennolt, Determining Punitive Damages: Empirical Insights and Implications for Reform, 50 BUFF. L. REV. 103, 159 (2002) (“Archival research examining overall patterns of awards find that punitive damages are infrequently awarded, moderate in size, awarded in response to