The Authority of Arbitrators to Award Punitive Damages: *Raytheon Co. v. Automated Business Systems*

I. INTRODUCTION

This Note analyzes the authority of commercial arbitrators to award punitive damages. The Note first discusses the use of arbitration in commercial disputes. The Note then examines the facts of *Raytheon Co. v. Automated Business Systems*,[1] a case in which the Second Circuit Court of Appeals reviewed an arbitration award of punitive damages in a commercial dispute. The Note then looks at the application of the Federal Arbitration Act to commercial arbitration. Finally, the Note analyzes three different approaches the courts have taken in reviewing punitive damage awards in commercial arbitration, and concludes that commercial arbitrators will likely have great discretion to award punitive damages in the future.

II. ARBITRATION OF COMMERCIAL DISPUTES

Arbitration has provided an efficient means to resolve commercial disputes in the United States.[2] Arbitration offers the advantages of speed, economy, expertise of the arbitrator, privacy, and a degree of effectiveness.[3] Speed is always of the essence in dispute resolution, especially for the party seeking relief. The "time" element of arbitration is also significant because of court congestion. In terms of economy, arbitration is often less costly than litigation. Arbitration typically reduces legal fees and the time that the individual parties themselves must devote to the dispute. The expertise of the arbitrator can reduce both the length and cost of the dispute as well as provide confidence that a fair and just resolution of the dispute will be reached. The private atmosphere of arbitration provides a climate that is favorable to continued business relations and avoids adverse publicity. On the downside, arbitration poses a degree of unpredictability in the arbitrator's decision due to the lack of the use of precedent and written opinion.[4]

Commercial arbitration provides the business community with a means to self-regulate disputes. Although the use of commercial arbitration has not expanded in the United States to the extent that it has in Europe, commercial arbitration has nevertheless experienced

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1. 882 F.2d 6 (1st Cir. 1989).
2. MARTIN DOMKE, COMMERCIAL ARBITRATION 2 (1965).
3. *Id.* at 8-11.
4. *Id.* at 14.

tremendous growth and has become something of an institution in the United States.[5]

Arbitration has not replaced formal court litigation, but does provide an efficient supplement to the judiciary system for parties who voluntarily submit their disputes to binding arbitration.[6] Due to the expertise of arbitrators on the subject matter of the particular dispute, judges have recently expressed through their opinions a greater willingness to defer to the judgment of arbitrators.

Arbitration is appropriate in a number of commercial disputes. Issues of fact and unclear wording in a contract are the most common areas of dispute.[7] In these areas, arbitration provides a more efficient means of dispute resolution because of the arbitrator's special knowledge of the subject matter of the commercial transaction.

For this reason, judges in recent years have tended to limit their review of commercial arbitration decisions to cases of abuse of discretion.[8] However, commentators have questioned whether the judiciary should grant arbitrators such discretion over the punitive damages portion of such an award.[9] Punitive damages provide a civil source of public retribution and are designed to punish the wrongdoer and to deter the wrongdoer and others from repeating the same offense.[10] Punitive damages also provide an incentive to wronged parties to pursue causes of action where tangible harm and resulting damages are nominal but where the defendant's behavior subjects society to substantial risk.[11]

III. *RAYTHEON CO. V. AUTOMATED BUSINESS SYSTEMS* - THE FACTS

In 1978, Lexitron, a subsidiary of Raytheon Company, entered into a contract with Automated Business Systems for the distribution of word processing equipment.[12] The contract contained a general arbitration clause which provided in pertinent part: "[a]ll disputes arising in

5. *Id.* at 2. Thomas J. Stipanowich, *Punitive Damages in Arbitration, Garrity v. Lyle Stuart, Inc. Reconsidered*, 66 B.U. L. REV. 953, 954 (1986); *see* Peter F. Gazada, Comment, *Arbitration: Making Court-Annexed Arbitration Attractive in Texas*, 16 ST. MARY'S L.J. 409, 411 (1985).

6. DOMKE, *supra* note 2, at 2.

7. DOMKE, *supra* note 2, at 3.

8. DOMKE, *supra* note 2, at 5.

9. AMERICAN ARBITRATION ASSOCIATION, COMMERCIAL RULES, Rule 3 (Feb. 1, 1984).

10. Stipanowich, *supra* note 5, at 955.

11. Hon. Donald D. Alsop & David F. Herr, *Punitive Damages in Minnesota Products Liability Cases: A Judicial Perspective*, 11 WM. MITCHELL L. REV. 319 (1985).

12. Raytheon Co. v. Automated Business Sys., 882 F.2d 6, 7 (1st Cir. 1989).

connection with the Agreement shall be settled by arbitration . . . conducted according to the rules of the American Arbitration Association."[13]

In 1986, Automated filed a demand for arbitration against Raytheon, alleging, *inter alia*, breach of contract, violation of the duty of good faith and fair dealing, fraud, deceit, and conspiracy.[14] In addition to requesting compensatory and consequential damages, Automated sought punitive damages on the alleged tort violations.[15]

After arbitration hearings, a majority of the panel of three arbitrators awarded damages to Automated in the following amounts: $408,000 in compensatory damages, $121,000 in attorneys' fees, $47,000 in expenses, and $250,000 in punitive damages.[16]

Raytheon filed suit in federal court to vacate the award, alleging, *inter alia*, that the arbitration panel had no authority to award punitive damages.[17] Raytheon, relying primarily on case law involving labor arbitration, argued that arbitrators must have explicit contractual authority in order to award punitive damages.[18]

The First Circuit Court of Appeals in *Raytheon*, thus faced the issue of whether commercial arbitrators, absent an express provision to the contrary, have the authority to award punitive damages.

IV. FEDERAL ARBITRATION ACT

A number of federal court rulings have held that arbitrators have the right to award punitive damages under the Federal Arbitration Act, which provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable,

13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 6.
18. *Id.* at 10.

> save upon such grounds as exist at law or in equity for the revocation of any contract.[19]

A significant issue involved in all of these cases is the power of courts to vacate arbitration awards. Section 10 of the Federal Arbitration Act provides that an arbitration award may be vacated:

> (a) Where the award was procured by corruption, fraud, or undue means.
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> (b) Where there was evident partiality or corruption in the arbitrators, or either of them.
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> (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any misbehavior by which the rights of any party have been prejudiced.
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> (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.[20]

Courts have generally held that arbitration awards enforcing an illegal agreement or an agreement violative of public policy should be vacated.[21] However, courts remain split over issues such as what is the best public policy to follow. For instance, New York courts have held that determination of punitive damages is best left to the judiciary, thereby restricting an arbitrator's authority.[22]

As a general rule, any doubt concerning the scope of arbitrable issues should be resolved in favor of arbitration. In *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*,[23] the United States Supreme Court held that the Federal Arbitration Act should be construed broadly. The Court thus overruled common law precedent in holding that a claim of fraud in the inducement of a contract was arbitrable under the Federal Arbitration Act where the contract, a consulting agreement, called for arbitration of "any controversy or claim arising out of or relating to [the consulting agreement], or breach thereof."[24] The Court based its holding

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19. 9 U.S.C. § 2 (1988).
20. 9 U.S.C. § 10 (1988).
21. Garrity v. Lyle Stuart, Inc., 353 N.E.2d 793 (N.Y. App. Div. 1976).
22. *Id.* at 796.
23. 388 U.S. 395 (1967).
24. *Id.* at 403.

on section 3 of the Federal Arbitration Act,[25] which requires a federal court in which a suit is brought upon any issue referable to arbitration under the contract to stay the action pending arbitration.

The Raytheon-Automated agreement contained a general arbitration clause, which provided that "all disputes" would be settled through arbitration.[26] However, the clause did not specifically address the issue of punitive damages.[27] The agreement required that arbitration be conducted according to the rules of the American Arbitration Association (AAA).[28] AAA Rule 42 states that arbitrators may grant any relief which is just and equitable within the terms of the agreement.[29] The *Raytheon* court thus had to determine whether the parties intended to include the power to award punitive damages within the terms of the agreement when the parties agreed to "settle" through arbitration all disputes arising under the contract and to authorize the arbitrator to grant any just and equitable relief. The court in *Raytheon* held that the plain language of the arbitration clause was sufficiently broad to permit an award of punitive damages.[30]

A number of decisions, including a decision by the First Circuit[31] (the same circuit court that decided *Raytheon*), have required explicit contractual authority before arbitrators can award punitive damages.[32] In a dispute involving a collective bargaining agreement, the First Circuit held that where the "parties to a collective bargaining agreement have provided for arbitration as the final and binding method for settling grievances the arbitration award is normally non-reviewable by a court."[33] However, the court further held that if the punitive damages award did not "draw its essence from the collective bargaining agreement," then the arbitration panel has exceeded its authority and the award must be vacated.[34]

The Seventh Circuit has upheld an arbitration award based on a collective bargaining agreement so long as the arbitration panel attempts to

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25. 9 U.S.C. § 3 (1988).

26. Raytheon Co. v. Automated Business Sys., 882 F.2d 6, 7 (1st Cir. 1989).

27. *Id.*

28. *Id.*

29. MARTIN DOMKE, DOMKE ON COMMERCIAL ARBITRATION App. VII at 53 (Gabriel M. Wilner rev. ed. 1990) (Commercial Arbitration Rules of the American Arbitration Association).

30. Raytheon Co. v. Automated Business Sys., 882 F.2d 6, 12 (1st Cir. 1989).

31. Bacardi Corp. v. Congreso de Uniones Industriales de Puerto Rico, 692 F.2d 210, 214 (1st Cir. 1982).

32. *Id.*; Miller Brewing Co. v. Brewery Workers Local Union No. 9, 739 F.2d 1159, 1164 (7th Cir. 1984), *cert. denied*, 469 U.S. 1160 (1985).

33. Bacardi Corp. v. Congreso de Uniones Industriales de Puerto Rico, 692 F.2d 210, 211 (quoting Bettencourt v. Boston Edison Co., 560 F.2d 1045, 1048 (1st Cir. 1977)).

34. *Id.* at 214.

interpret the collective bargaining agreement itself rather than to apply the arbitrators' own ideas of right and wrong.[35] The court went on to hold that it could only vacate a remedy imposed by a labor arbitration panel where the court determined that the arbitrators' remedy was clearly not within the contemplation of the parties and was thus not authorized by the collective bargaining agreement.[36]

The First Circuit distinguished these decisions vacating awards of punitive damages, which were based on labor arbitration, from *Raytheon*, which involved commercial arbitration.[37] The court saw labor arbitration as part of an integral process of ongoing dispute resolution.[38] Commercial arbitration is designed as a means of permanent dispute resolution, with the primary objectives of saving both time and money.[39] Unlike labor arbitration, commercial arbitration is generally not designed to facilitate an ongoing process.[40] The court thus discarded any reliance by plaintiff - Raytheon on labor arbitration case law.

V. JUDICIAL APPROACHES TO PUNITIVE DAMAGE AWARDS IN COMMERCIAL ARBITRATION

Courts in general have taken three different approaches to the issue of punitive damage awards in commercial arbitration.

A. Punitive Damages are Per Se Illegal

First, some courts have held that arbitrators can never award punitive damages.[41] The First Circuit in *Raytheon* cites *Garrity v. Lyle Stuart Inc.*,[42] a 1976 New York state court case, as the lead case in which New York's highest court held that, as a matter of state law, arbitrators can never award punitive damages. *Garrity* directly addressed the issue

35. Miller Brewing Co. v. Brewery Workers Local No. 9, 739 F.2d 1159, 1162-63 (7th Cir. 1984).

36. *Id.* at 1164.

37. Raytheon Co. v. Automated Business Sys., 882 F.2d 6, 10 (1st Cir. 1989).

38. *Id.*

39. *Id.* at 11.

40. *Id.* at 10.

41. Garrity v. Lyle Stuart, Inc., 353 N.E.2d 793 (N.Y. App. Div. 1976); Publishers' Ass'n of N.Y. City v. Newspaper and Mail Deliverers' Union of N.Y. and Vicinity, 114 N.Y.S.2d 401, 404-06 (N.Y. App. Div. 1952). *See also* Anderson v. Nichols, 359 S.E.2d 117, 121, n. 1 (W.Va. 1987); Shaw v. Kuhnel & Assoc., 698 P.2d 880, 882 (N.M. 1985).

42. Garrity v. Lyle Stuart, Inc., 353 N.E.2d 793 (N.Y. App. Div. 1976).

of whether arbitrators in general have the power to award punitive damages.[43] *Garrity* did not limit its holding to commercial arbitrators.

Author Joan Garrity had sued her publisher for fraud. The publishing contract provided for arbitration of all disputes. The arbitration panel awarded Garrity full compensatory damages in addition to $7,500 in punitive damages. Both the trial court and lower appellate court affirmed the award of punitive damages by the commercial arbitrators.

The New York Court of Appeals vacated the punitive damages award.[44] The court held that although arbitrators are generally free to fashion a remedy commensurate with the wrong, arbitrators have no power to award punitive damages, even if expressly agreed upon by the parties. The court based its holding almost solely on public policy,[45] stating that arbitrators' broad powers are limited to a compensatory remedy measured by the harm caused. The *Garrity* court viewed punitive damages as a social exemplary "remedy," and, as such, punishable only by the state and not by private individuals acting through the courts.[46] Punitive damages are a form of retribution whereby the defendant has committed a moral wrong, whereas compensatory damages provide a means of relief to an injured party. Punitive damages are awarded as a means of deterring either the same defendant (specific deterrence) or others (general deterrence) from committing the same act. Punitive damages are thus the civil form of criminal sanctions.

Judge Breitel, writing for the majority in *Garrity*, also noted the absence of standards for judicial oversight of arbitrators' awards.[47] When reviewing arbitration awards, courts generally limit their review to three factors: (1) whether the award is authorized by the contract, (2) whether the proceeding is complete and final on its face, and (3) whether the proceeding was fairly conducted.[48] According to Judge Breitel, these three factors provide an adequate means of reviewing awards of compensatory damages because arbitrators must make an objective determination of *actual* damages based upon the injury caused.

Punitive damages, in contrast, involve subjective determinations based on the *conduct* of the defendant, not the harm caused by such conduct. As such, the majority of the New York Court of Appeals expressed its concern for the potential for manipulation of the arbitrators

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43. *Id.* at 794.
44. *Id.*
45. *Id.* at 795.
46. *Id.* at 796.
47. *Id.*
48. *Id.*

by the party in the superior bargaining position.[49] The majority concluded that such potential for abuse would reduce confidence in the arbitration process.[50]

The dissent in *Garrity* also focused on public policy, citing the importance of arbitration in the process of dispute resolution.[51] The dissent proposed that arbitrators be permitted to grant remedies as they see fit, and to be bound only by the limits of justice and rationality. The dissent urged that since an award of $7,500 in punitive damages was neither irrational nor unjust, the arbitration award should be upheld.

Although a number of federal court rulings in recent years have held that arbitrators have the right to award punitive damages under the Federal Arbitration Act, a district court from the Southern District of New York held that state law controls the issue of whether arbitrators have the authority to award punitive damages.[52] The case was brought by an employee who sued his former employer, a securities corporation and member of the New York Stock Exchange. The court held that state substantive law which prevents arbitrators from awarding punitive damages does not conflict with any provision of the Federal Arbitration Act. The court thus adopted the *Garrity* rule in favoring the state substantive law.

B. Punitive Damages Require an Express Agreement by the Parties

Some courts have held that arbitrators have no authority to award punitive damages absent an express agreement by the parties. The Ohio Supreme Court was faced with the issue of whether arbitrators had the power to award punitive damages in contractual disputes in *State Farm Mutual Insurance Co. v. Blevins*.[53]

Ohio Revised Code section 2711.10 sets the limits by which Ohio courts may review an award of arbitration. It provides:

> In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:
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> . . . .

49. *Id.*

50. *Id.*

51. *Id.* at 799-800 (Gabrielli, J., dissenting).

52. Fahnestock & Co. v. Waltman, No. 90 Civ. 1792 (PKL), 1990 U.S. Dist. LEXIS 11024 (S.D.N.Y. Aug. 23, 1990).

53. 551 N.E.2d 955 (Ohio 1990).

> (D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.[54]

State Farm, the defendant, alleged that the arbitration panel exceeded their authority by awarding punitive damages.[55] The Ohio Supreme Court thus had to examine the parties' contract, the insurance policy, to determine whether the arbitrators had the power to award punitive damages.

The court looked at the construction of the specific contractual provisions of the insurance policy. The plaintiff had sued to recover on an automobile liability insurance policy issued by the defendant. The policy stated: "We will pay damages for bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The bodily injury must be caused by accident arising out of the operation, maintenance or use of an uninsured motor vehicle."[56] The policy also contained an arbitration clause which did not address the issue of punitive damages. In holding that an arbitrator's powers are set by the agreement from which the arbitrator draws authority, the court refused to award punitive damages absent express language in the contract granting such authority.

Justice Brown, writing for the majority, stated that "the purpose of punitive damages is to punish the offending party and make the offender an example to others so that they might be deterred from similar conduct," and that Ohio disfavors insurance against punitive damages resulting from the insured's own torts.[57] The majority was hesitant to compel the insurer to unwittingly provide coverage for punitive damages. The Ohio Supreme Court thus held that in the absence of specific contractual language, coverage for punitive or exemplary damages will not be presumed under a provision for uninsured motorist coverage.[58]

With regard to the specific insurance policy at issue, the majority focused on the provision of the policy which promised to pay damages "for bodily injury."[59] Because the majority recognized that this provision limited the insurer's liability to compensatory damages, the court found that the insurer did not contract to insure against punitive damages. The

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54. OHIO REV. CODE ANN. § 2711.10 (Baldwin 1990).
55. *Id.* at 166.
56. *Id.* at 165.
57. *Id.* at 168.
58. *Id.* at 169.
59. *Id.*

court thus held that the arbitrators exceeded their authority when they awarded punitive damages.

The First Circuit in *Raytheon* similarly looked at the construction of the contractual provision.[60] However, the court, finding the words "[a]ll disputes" to be very broad, upheld the award of punitive damages by the arbitrator.

C. *Arbitrators Have Discretion to Award Punitive Damages*

Some courts have upheld punitive damage awards absent specific contractual provisions addressing the issue. In *Bonar v. Dean Witter Reynolds*,[61] the Eleventh Circuit Court of Appeals held that, by adopting the rules of the American Arbitration Association, the contract authorized the arbitrators to award punitive damages. The court's reasoning was based on an arbitration clause which did not address the issue of punitive damages. An arbitration panel awarded punitive as well as compensatory damages to investors involved in a dispute with Dean Witter Reynolds, a securities broker. Dean Witter sued to vacate the arbitrator's award.

Similarly to *Blevins* and *Raytheon*, the Eleventh Circuit focused on the language of the agreement to determine whether the punitive damages award was justified. The arbitration clause of the agreement between Dean Witter and Bonar provided:

> Any controversy between [Dean Witter] and [the Bonars] arising out of or relating to this contract or the breach thereof, shall be settled by arbitration, in accordance with the rules, then obtaining, of either the Arbitration Committee of the Chamber of Commerce of the State of New York, or the American Arbitration Association, or the Board of Arbitration of the New York Stock Exchange, as the [Bonars] may elect . . . . Any arbitration hereunder shall be before at least three arbitrators and the award of the arbitrators, or a majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.[62]

AAA Commercial Arbitration Rule 42, the same rule cited in *Raytheon*, provides that the arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the agreement

60. Raytheon Co. v. Automated Business Sys., 882 F.2d 6, 9 (1st Cir. 1989).
61. 835 F.2d 1378 (11th Cir. 1988).
62. *Id.* at 1386.

of the parties.[63] As in *Raytheon*, the agreement in *Bonar* appeared to be sufficiently broad to permit the arbitrators to award punitive damages.

However, another section of the agreement between the Bonars and Dean Witter provided that "[t]his agreement and its enforcement shall be governed by the laws of the State of New York . . . ."[64] Under *Garrity*,[65] arbitrators acting pursuant to the law of New York may not award punitive damages. The obvious dilemma facing the Eleventh Circuit was whether to apply AAA Rule 42, which would permit the punitive damages award, or to apply the law of the state of New York, which flatly prohibits arbitrators from awarding punitive damages.

The Eleventh Circuit cited *Willoughby Roofing and Supply Co. v. Kajima International, Inc.*,[66] for the proposition that a choice of law provision in a contract does not, by itself, prevent arbitrators from awarding punitive damages.

> "Although the parties to a contract can agree that a certain state's law will govern the resolution of issues submitted to arbitration (i.e., plaintiff's entitlement to punitive damages, assuming [a certain state's substantive] law applies), federal law governs the categories of claims subject to arbitration" and "the resolution of issues concerning the arbitration provision's interpretation, construction, validity, revocability, and enforceability."[67]

Accordingly, the choice of law provision in the contract did not deprive the arbitrators of their authority to award punitive damages.[68]

In *Willoughby*, the district court also referred to strong federal policies supporting arbitration under the Federal Arbitration Act in upholding the arbitral award of punitive damages.[69] The contract at issue in *Bonar* evidenced a transaction in interstate commerce, and was therefore subject to the Federal Arbitration Act.[70] The contract agreement was therefore subject to the broad authority provided by AAA Rule 42.[71]

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63. DOMKE, *supra* note 29, App. VII at 43.

64. Bonar v. Dean Witter Reynolds, 835 F.2d 1378, 1386 (11th Cir. 1988).

65. Garrity v. Lyle Stuart, Inc., 353 N.E.2d 793 (N.Y. App. Div. 1976).

66. 598 F. Supp. 353 (N.D. Ala. 1984), *aff'd*, 776 F.2d 269 (11th Cir. 1985).

67. *Id.* at 359 (quoting Willis v. Shearson/American Express, 569 F. Supp. 821, 823-24 (M.D. N.C. 1983)).

68. Willoughby Roofing and Supply Co. v. Kajima Int'l, 598 F. Supp. 353, 357-58 (N.D. Ala. 1984), *aff'd*, 776 F.2d 269 (11th Cir. 1985).

69. *Id.*

70. Bonar v. Dean Witter Reynolds, 835 F.2d 1378, 1387 (11th Cir. 1988).

71. *Id.* at 1386-87.

Accordingly, the Eleventh Circuit upheld the punitive damages awarded by the arbitration panel despite the choice of law provision.

Bonar thus held that investors do not waive their right to punitive damages against securities brokers where the agreement is ambiguous with regard to punitive damages. Similar to the arbitration provision at issue in the *Raytheon* agreement, the arbitration provision in *Bonar* authorized arbitrators to "grant any remedy or relief which [they] deem[ed] just and equitable and within the scope of the agreement of the parties."[72] The *Raytheon* court adopted the *Bonar* holding and affirmed the lower court's ruling which refused to vacate the arbitrator's award of punitive damages.

VI. DISTINGUISHING THE CASES

The court in *Garrity* was concerned that permitting awards of punitive damages in arbitration would erode confidence in the arbitral process.[73] The *Garrity* court based its belief on two factors: (1) that punitive damages would undermine the ongoing contractual relationships between parties, and (2) that granting such broad and unreviewable power to arbitrators in the form of punitive damages might make arbitration a "trap for the unwary."[74]

Raytheon is distinguishable from *Garrity* in that the court in *Raytheon* expressly excludes the "ongoing contractual relationship issue" from its holding. According to *Raytheon*, such an "ongoing contractual relationship" exists in labor arbitration disputes. In the typical commercial dispute, the parties have frequently completed or terminated their contractual performance prior to arbitration. *Raytheon* distinguished such disputes from its holding which applied to a contract that the parties expected would terminate.

Raytheon is also distinguishable from *Blevins*. Although both courts in *Raytheon* and *Blevins* looked at the arbitration provisions of the contract, *Blevins* concerned a provision for uninsured motorist coverage. Thus, in *Blevins*, punitive damages would have no deterrent effect on the conduct of the defendant insurance company or on the conduct of society in general. In contrast, the arbitrators in the Raytheon-Automated dispute may well have believed that punitive damages would have a deterrent effect in the future.

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72. *Id.* at 1387.

73. Stipanowich, *supra* note 6, at 1007.

74. Garrity v. Lyle Stuart, Inc., 353 N.E.2d 793 (N.Y. App. Div. 1976).

VII. REASONS FOR PERMITTING ARBITRATORS TO AWARD PUNITIVE DAMAGES

There are advantages to permitting arbitrators to award punitive damages absent an agreement by the parties to the contrary. Because the parties have agreed to binding arbitration, a rule prohibiting arbitrators from awarding punitives may effectively waive the parties' right to seek punitive damages. The effect would be to limit the use of arbitration. The unavailability of punitive damages in arbitration may become a strategic factor for parties choosing between this method of dispute resolution and formal litigation.

The party denied punitives will most likely be the party in the lower bargaining position. Punitive damages also punish the culpable party and deter similar conduct in the future. Moreover, punitive damages also permit the victim to defray the expenses of arbitration and encourages the seeking of redress for commercially reprehensible behavior.[75]

VIII. CONCLUSION

Parties to commercial transactions have increasingly relied upon arbitration to settle their disputes. This dispute resolution technique typically arises from a general arbitration clause in the commercial contract stating that the parties agree to resolve "all disputes" through arbitration. The question is whether the "all disputes" clause encompasses punitive damages.

The New York Court of Appeals, the state's highest court, has held that punitive damages awarded by arbitrators are per se illegal. The court in *Garrity* reasoned that public policy discourages arbitrators from awarding punitive damages because punitive damages are a social exemplary remedy, designed to punish the offender much like criminal law, and therefore can only be imposed by the state. The court also expressed concern about the lack of judicial oversight of arbitration awards.

The Ohio Supreme Court recently held that arbitrators could not award punitive damages absent an express agreement by the parties granting such authority. In *Blevins*, the court looked at the specific arbitration provision of the contract to determine the arbitrators' authority to award punitive damages. The court concluded that the provision did not grant such authority. However, the court's holding is limited by the

75. Stipanowich, *supra* note 5, at 1009-10.

fact that the dispute involved an insurance contract and a provision for uninsured motorist coverage.

In the Raytheon-Automated agreement, the contract contained an "all disputes" clause and Automated sought punitive damages before the arbitration panel. The arbitration panel awarded punitive damages to Automated, and Raytheon sued in federal court to vacate the punitive damages award. The First Circuit Court of Appeals distinguished its prior decisions in upholding the punitive damages award. The court in *Raytheon* relied on the fact that labor arbitration involves a continuing and ongoing relationship, whereas, the parties to the Raytheon-Automated agreement terminated their relationship upon completion of performance.

Raytheon is distinguishable from both *Garrity* and *Blevins*. Contrary to the concern in *Garrity*, the *Raytheon* dispute did not involve an ongoing commercial relationship. Because the insurance provision at issue in *Blevins* was an uninsured motorist coverage clause, punitive damages would not deter future conduct of the insurance company.

Raytheon thus serves as the foundation for the authority of arbitrators to award punitive damages in the future. Because of advantages such as speed, cost, and expertise of the arbitrators, courts have increasingly deferred to arbitration. More courts will likely adopt the *Raytheon* holding by permitting arbitrators to award punitive damages in commercial disputes excluding contracts based on a continuing relationship and absent an agreement to the contrary.

James Hadden