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PARTIALITY, PASSION, AND PREJUDICE: THE NECESSITY
OF POSTVERDICT JUDICIAL REVIEW

Honda Motor Co. v. Oberg, 114 S. Ct. 2331 (1994)

Troy Kubes***

Respondent, Karl L. Oberg, sought compensatory and punitive damages for injuries received while driving a three-wheeled all-terrain vehicle.¹ The vehicle was manufactured and sold by the Petitioner, Honda Motor Corp.² At the trial level, an Oregon jury awarded Oberg both compensatory and punitive damages, the latter being over five times the amount of the former.³ Honda argued that the punitive damages award violated the Due Process Clause of the Constitution because the award was excessive and because the Oregon court system had no power to correct excessive verdicts under a 1910 Amendment to the State Constitution.⁴ The Amendment stated that a judicial review of the amount of punitive damages awarded by a jury is unwarranted “unless the court can affirmatively say there is no evidence to

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1. *Honda Motor Corp. v. Oberg*, 114 S. Ct. 2331, 2334 (1994) [hereinafter *Oberg I*]. Oberg alleged that Honda knew or should have known that the vehicle had an inherently and unreasonably dangerous design. *Id.*

2. *Id.*

3. *Id.* The trial lasted four weeks, but the jury (in an 11 to 1 decision) only took five hours to return a verdict for Oberg. *Punitive Damages Awarded Against an All-Terrain Vehicle Manufacturer*, 32 ATLA L. REP. 412, 413 (1989). Honda was found liable for the accident, and the trial jury awarded Oberg \$919,390.39 in compensatory damages and \$5,000,000 in punitive damages. *Oberg I*, 114 S. Ct. at 2334. The amount of compensatory damages was reduced by 20% (\$735,512.31) since the Court found that Oberg's negligence had contributed to the accident. *Id.*

4. *Oberg v. Honda Motor Corp.*, 108 Or. App. 43 (Or. Ct. App. 1991). The 1910 Amendment to the State Constitution of Oregon eliminated any judicial review standard that once had been available in Oregon. See *Van Lom v. Schneiderman*, 187 Or. 89, 93 (1949). The amended article provides the Oregon courts with the following:

In actions of law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this State, unless the court can affirmatively say there is no evidence to support the verdict.

OR. CONST. art. VII, § 3 (amended 1910).

support the verdict.”⁵ Both the Oregon Court of Appeals⁶ and the Oregon Supreme Court⁷ rejected Honda’s argument.⁸ The United States Supreme Court granted certiorari⁹ and HELD that Oregon’s denial of review of the size of punitive damage awards violated the Due Process Clause of the Fourteenth Amendment.¹⁰

Even before the Due Process Clause, the court system was concerned with verdicts that awarded excessive punitive damages.¹¹ As early as the mid-1700s, the English courts rejected absolute rules against the review of damages.¹² Those courts continually reserved the power to order new trials when the damages awarded were too high.¹³ After the American Colonies gained independence from England, the U.S. common law courts followed the lead of the English by granting judicial review of the size of damages awarded.¹⁴ Many U.S. courts used a review standard that examined whether the jury was partial or whether passion and prejudice played a role in its decision.¹⁵ Even though the English and U.S. systems generally followed

5. OR. CONST. art. VII, § 3 (amended 1910).

6. *Oberg*, 108 Or. App. at 53.

7. *Oberg v. Honda Motor Corp.*, 316 Or. 263, 289 (1993) [hereinafter *Oberg II*]. The Supreme Court of Oregon relied heavily on the safeguards that the Oregon system uses in punitive damages cases. Primarily, the court focused on the detailed jury instructions and the clear and convincing evidence standard used by the jury. The court found these safeguards to be as or more effective than other states’ safeguards to prevent excessive punitive damage awards. *Id.* at passim.

8. *Id.* at 266; *Oberg*, 108 Or. App. at 49-51.

9. *Honda Motor Corp. v. Oberg*, 510 U.S. 1068 (1994). The Supreme Court decided to consider whether Oregon’s limited judicial review of punitive damage awards was consistent with the Due Process Clause of the Fourteenth Amendment. *Oberg I*, 114 S. Ct. at 2334.

10. *Oberg I*, 114 S. Ct. at 2342. The U.S. Supreme Court reversed the decisions of the Oregon courts and remanded the case back to the Oregon Supreme Court for further proceedings in line with the instant decision. *Id.*

11. See cases cited *infra* notes 12, 14-15.

12. See *Huckle v. Money*, 2 Wils. 205, 206 (C. P. 1763) (finding no absolute rule against review of the amount of damages awarded and determining that when damages are “outrageous” and “all mankind at first blush must think so” a new trial must be ordered); *Leith v. Pope*, 2 Black W. 1327, 1328 (C. P. 1779) (“In cases of tort the Court will not interpose on account of the largeness of damages, unless they are so flagrantly excessive as to afford an internal evidence of the prejudice and partiality of the jury.”). But see Brief for Legal Historians Daniel R. Coquillette et. al. as Amicus Curiae at 2, *Oberg I*. There is no evidence that different standards of judicial review were applied for punitive and compensatory damages before the twentieth century. *Id.*

13. See cases cited *supra* note 12.

14. See, e.g., *Blunt v. Little*, 3 F. Cas. 760 (CC Mass. 1822); *Whipple v. Cumberland Mfg. Co.*, 29 F. Cas. 934 (CC Mass. 1822).

15. *Oberg I*, 114 S. Ct. at 2337. Judges had a problem with determining the basis of the jurors’ reasoning so they began to infer passion, prejudice, or partiality from the size of the award. See *Belknap v. Boston & Maine R.R.*, 49 N.H. 358, 374 (1870) (“We think it evident that the jury were affected by some partiality or prejudice from some cause, and that their verdict ought for that reason to be set aside.”).

the verdicts of the jury, the courts of both countries also realized that juries had the potential to award excessive damages in violation of an individual's right to due process of law.

An early U.S. case that ruled in favor of common law traditions and the due process of law was *Tumey v. Ohio*.¹⁶ Tumey was arrested and charged with unlawfully possessing intoxicating liquor.¹⁷ Tumey moved to dismiss the case, claiming the Mayor should be disqualified from trying him.¹⁸ Tumey's reasoning was that the Mayor received a portion of any imposed fine as compensation.¹⁹ The motion was denied, and the Mayor tried and convicted Tumey.²⁰ The Supreme Court found this practice to be a violation of the Fourteenth Amendment in that it deprived a defendant of due process of law because the judge had interests other than justice.²¹

The *Tumey* Court looked to "those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors" that have been used since the settlement of this country.²² The Court did not hesitate to find the proceeding violative of due process since Tumey was deprived of a well-established common law protection.²³ In effect, the Court established that it would enforce common law traditions rather than uphold laws and statutes that deprive a defendant of essential due process mechanisms. Based on the *Tumey* decision, it would appear that the ground for judicial review of due process violations is well founded in U.S. history. However, Oregon departed from the traditional scope of review in adopting the 1910 Amendment to the Oregon Constitution.²⁴

In the case of *Van Lom v. Schneiderman*,²⁵ the Oregon State Supreme Court interpreted the 1910 Amendment.²⁶ The plaintiff, Van Lom, sought

16. 273 U.S. 510 (1927).

17. *Id.* at 515.

18. *Id.* Tumey founded his argument under the protection of the Fourteenth Amendment. *Id.*

19. *Id.* As part of Ordinance No. 125, Section V stated "[t]hat the mayor of the village of North College Hill, Ohio, shall receive or retain the amount of his costs in each case, in addition to his regular salary, as compensation for hearing such case." *Id.* at 519.

20. *Id.* at 515.

21. *Id.* at 523.

22. *Id.*; see, e.g., *Ownbey v. Morgan*, 256 U.S. 94 (1921); *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272 (1856).

23. *Tumey*, 273 U.S. at 535. The *Tumey* Court determined that a procedure in which the judge had a direct pecuniary interest denied the defendant due process of law. *Id.* at 532.

24. *Oberg I*, 114 S. Ct. at 2335.

25. 187 Or. 89 (1949).

26. *Id.* at 113. The Oregon Supreme Court noted that since the adoption of the 1910 Constitutional Amendment, Oregon courts do not have the power to set aside verdicts for unliquidated damages on the ground that the verdict is excessive. *Id.* at 94. The only power the courts have to challenge the damage award is to examine the record and determine

both compensatory and punitive damages for assault and battery, and false imprisonment.²⁷ The jury returned a verdict that granted Van Lom the entire amount requested.²⁸ The defendant, Schneiderman, appealed the judgment, arguing that the damages were excessive.²⁹ The court was of the opinion that the damages were excessive, but stated, "[A] majority are of the opinion that this court has no power to disturb the verdict"³⁰ The court held that it had "no right or authority to subvert its obvious purpose or to refuse to apply its provisions to the full extent of their evident meaning."³¹ Thus, under *Van Lom*, a defendant in Oregon is at the total mercy of the jury since the courts have no power to set aside excessive damages.³²

On the other hand, in direct conflict with Oregon's ruling in *Van Lom*, the U.S. Supreme Court, in the landmark decision of *Pacific Mutual Life Insurance Co. v. Haslip*,³³ confirmed the necessity of judicial review of excessive damages for due process purposes. The *Haslip* Court found that the Constitution imposes a substantive limit on the size of punitive damage awards.³⁴ The Court again approved the common law method for determining punitive damages.³⁵

In *Haslip*, Haslip and several others purchased health and life insurance through a Pacific Mutual Life Insurance agent.³⁶ The agent misused the funds, and in turn, Haslip's health insurance coverage was cancelled.³⁷

whether there is any evidence to support the verdict. *Id.* at 95.

27. *Id.* at 91.

28. *Id.* The plaintiff received \$5000 in compensatory damages and \$5000 in punitive damages. *Id.*

29. *Id.* The stories of the defendant and the plaintiff were quite different. Even though their testimonies conflicted, there was no evidence that the plaintiff had been seriously injured. *Id.* at 93. It was discovered that the plaintiff's injuries consisted of a bruise on her leg and wrist. *Id.* Also, she did not miss any work after the assault. *Id.* These facts were the basis for questioning the amount awarded in the instant case. *Id.*

30. *Id.* The Supreme Court of Oregon explained its circumstance under the 1910 Amendment. The Supreme Court was authorized by the Amendment only to either "affirm the judgment, notwithstanding any error committed during the trial, or to direct the entry of such judgment as should have been entered in the court below." *Id.* at 100.

31. *Id.* at 113; see also *McCulloch v. Maryland*, 4 Wheat. 316, 406-07 ("It must never be forgotten that it is a constitution we are expounding.").

32. *Van Lom*, 187 Or. at 93. For further discussion, see *supra* note 30 and accompanying text.

33. 499 U.S. 1 (1991).

34. See *id.* at 18. As in *Tumey*, the *Haslip* Court stressed the importance of enforcing due process in damage awards. *Id.* at passim. This shows the consistency of the U.S. Supreme Court while the Oregon courts have opposed judicial review of jury awards.

35. *Id.* at 15. The common law method instructed the jury to consider the gravity of the wrong and the need to deter this type of wrong. The jury's decision would then be reviewed by the trial and the appellate courts to ensure the amount was reasonable. *Id.*

36. *Id.* at 4-5.

37. *Id.* at 5.

After she was hospitalized, Haslip lost a claim against a doctor for unpaid bills.³⁸ She then filed suit against Pacific Mutual, claiming that the insurance company, under a theory of *respondeat superior*, was to blame for the policy that had lapsed without her knowledge.³⁹ The Court found for Haslip with a punitive damage award of at least \$840,000.⁴⁰

Pacific Mutual appealed to the Supreme Court, challenging Alabama's punitive damage process as the "product of unbridled jury discretion and as violative of its due process rights."⁴¹ Though the court ruled there was no violation of due process, the Justices did express their individual opinions on the matter. In a concurring opinion, Justice O'Connor said that "one must concede that unlimited jury discretion . . . in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities."⁴² This standard from *Haslip* is a modern approach to excessive punitive damages and is similar to the historical view that due process requires judicial review of a jury's verdict to avoid unjustly punishing a defendant.⁴³

In the instant case, the U.S. Supreme Court continued the trend of reviewing potential violations of due process. It applied the standard set out in *Haslip* in determining whether the Due Process Clause requires judicial review of the amount of punitive damage awards.⁴⁴ Use of the *Haslip* standard was necessary since the Court ruled that the Constitution imposes a substantive limit on punitive damage awards.⁴⁵ The Court began with the question of whether Oregon had departed from traditional procedures.⁴⁶ Since Honda was liable for punitive damages in excess of five times the amount of compensatory damages without the benefit of judicial review for

38. *Id.*

39. *Id.* at 5-6.

40. *Id.* at 7 n.2. The punitive damage award must have been at least \$840,000 since in Haslip's argument to the jury, counsel requested compensatory damages of \$200,000. If full compensatory damages had been awarded, then punitive damages would have been \$840,000 (*i.e.*, jury award of \$1,040,000 minus full compensatory damages of \$200,000 = \$840,000). *Id.*

41. *Id.* at 7. The U.S. Supreme Court granted certiorari to review Alabama's punitive damages procedures and the award. *Pacific Mutual Life Insur. v. Haslip*, 494 U.S. 1065 (1991).

42. *Haslip*, 499 U.S. at 18. Justice Brennan stated that the Court cannot draw a bright line between which punitive damage awards are constitutionally acceptable and which are unacceptable. He said that the important elements that the Court should consider are the reasonableness of the award and the guidance given to the jury by the court. *Id.*

43. *Id.* at 15. For an explanation of the common law method, see *supra* note 35 and accompanying text.

44. *Oberg I*, 114 S. Ct. at 2334-35.

45. See *id.* at 2335. *Haslip* emphasized the importance of an effective procedural component to counter arbitrary awards given by the jury. See *Haslip*, 499 U.S. at 20. The Court desired to have "meaningful and adequate review by the trial court" and subsequent appellate review. *Id.*

46. *Oberg I*, 114 S. Ct. at 2338.

excessive awards,⁴⁷ the Court did not hesitate to look at Oregon's abrogation of a well-established common law protection.⁴⁸

While looking at Oregon's deviation from the national standard, the Court strengthened its review by including the reasoning from *Tumey* and concluding that well-established procedures cannot be abandoned when due process is being impeded.⁴⁹ The jury in the instant case was given nearly pure discretion in penalizing Honda for the vehicle mishap.⁵⁰ The Court noted that the Due Process Clause is concerned with arbitrary deprivations of liberty or property, which it viewed as the problem in the instant case.⁵¹ Also, since all of the other states incorporated the common law practice of judicial review, there was a strong presumption in favor of judicial review of punitive damages.⁵² The Court held that in light of a possible deprivation of Honda's property, an unreviewable jury decision should not be enforced.⁵³

In contrast, the dissent saw Oregon's departure from the standard procedure as adequate since its adopted procedures conformed with the standards set out in the Constitution.⁵⁴ In the dissent, Justice Ginsburg also considered the decision in *Haslip* and concluded that limits rather than set standards had been given in that case.⁵⁵ According to Justice Ginsburg, the procedural standards that Oregon imposed on the jury were adequate to keep awards within the limits imposed by the Court in *Haslip*.⁵⁶ Justice Ginsburg therefore found the Court's procedural directive to the Oregon courts to be neither necessary nor proper.⁵⁷

The instant case finally gave the Supreme Court the chance to set a

47. *Id.* at 2334. For a discussion of the damage awards, see *supra* note 3 and accompanying text.

48. *See id.* at 2336-38.

49. *Id.* at 2340.

50. *See id.* at 2341. The instant Court recognized that Oregon had pre-verdict procedures to instruct the jury on granting awards. Its concern was the possibility that the jury might disregard the instructions and return a biased and arbitrary award. *Id.* *But see id.* at 2344 (Ginsburg, J., dissenting) ("The procedures Oregon's courts followed in this case satisfy the due process limits indicated in *Haslip* . . . ; the jurors were adequately guided by the trial court's instructions . . .").

51. *Id.* at 2342.

52. *Id.*

53. *Id.*

54. *Id.* at 2343. The dissent noted the following limits that conform to the Constitution's due process threshold: (1) the plaintiff must establish entitlement to punitive damages by clear and convincing evidence under specific substantive criteria, and (2) the decision of the jury is subject to judicial review if the jury was improperly instructed or there was no evidence to support the verdict. *Id.*

55. *Id.* The Court in *Haslip* refused to "draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable." 499 U.S. at 18.

56. *See Haslip*, 499 U.S. at 20.

57. *Oberg I*, 114 S. Ct. at 2350 (Ginsburg, J., dissenting).

standard of review for questions of excessive punitive damages. The instant Court was able to use its judicial history and common law tradition to reinforce its decision that Oregon's deviation from the national standard of judicial review was unjust.⁵⁸ Also, the Court, in defining the broad standards for punitive damages in *Haslip*, mandated that states have some system for postverdict judicial review.⁵⁹ The narrowing of the *Haslip* standard to limit state choices in preventing excessive punitive damages caused Justice Ginsburg to question the majority's desire and intentions.⁶⁰ The majority's decision was based on the following: (1) reliance on common law tradition, (2) Oregon's deviation from the rest of the states in review standards, (3) a strong presumption of judicial review, and (4) considerations of justice.⁶¹ Based on these factors, the Court concluded that judicial review of possibly excessive punitive damages is required by the Due Process Clause.⁶²

The reasoning of the Court is the key to the decision reached in the instant case. After examining the subject of excessive punitive damages for the third time in four years,⁶³ the Court was anxious and determined to define a standard for punitive damages. Not only did the instant Court clarify its stand on punitive damages, but it also laid a foundation for others to challenge the amount of punitive damages awarded against them.⁶⁴ The Court effectively molded its decision in *Haslip* to fit its desire to curtail the award of excessive punitive damages.⁶⁵

For many years, the Court had been looking for the opportunity to overrule juries' punitive damage awards.⁶⁶ Oregon proved to be the victim with its original adoption of review procedures that were not in line with national standards.⁶⁷ The Court most likely felt a sense of duty to help

58. See cases cited *supra* notes 12, 14-15.

59. See *Oberg I*, 114 S. Ct. at 2342.

60. *Id.* at 2348-49 (Ginsburg, J., dissenting).

61. *Id.* at *passim*.

62. *Haslip*, 499 U.S. at 15.

63. *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989); *Haslip*, 499 U.S. 1 (1991); *TXO Production Co. v. Alliance Resources*, 113 S. Ct. 2711 (1993).

64. Sheila L. Birnbaum & J. Russell Jackson, *In Oberg, the High Court Clarified Its Stand on Punitive Damages, Laying a Foundation for Future Constitutional Challenges to Awards*, NAT'L L.J., Aug. 1, 1994, at B4. This commentary observed that the Court had clarified its position by requiring that judges must review the amount of the punitive award. Also, the Court's concern about unfair awards and the possibility of historical change that would require adjustment of punitive damages was viewed as an opportunity for others to make future challenges. *Id.*

65. See *Oberg I*, 114 S. Ct. at 2335.

66. See cases cited *supra* note 63.

67. See *Oberg I*, 114 S. Ct. at 2335-38; see also Claudia MacLachlan, *High Court Takes Another Look at Punitive Damages*, NAT'L L.J., Jan. 31, 1994, at 17 (Honda's attorney,

fellow judges out of a situation where the Oregon legislation disallowed judicial review of punitive damages.⁶⁸ The lack of power that gave rise to this predisposition was voiced in the *Van Lom* decision.⁶⁹ The Oregon court took a legalistic approach in defining the 1910 Amendment handed down by the legislature.⁷⁰ Thus, the court, knowing the award was excessive, found it had no power under the Amendment to reverse.⁷¹ The Supreme Court found a perfect chance in the instant case to reestablish judicial supremacy in determining review standards.

To establish its position, the majority, as Justice Stevens detailed, listed an abundance of cases to support its position.⁷² As mentioned above, the Court was eager to set a standard that would limit excessive punitive damages.⁷³ To effectively enact this standard, the instant Court needed Constitutional backing to avoid criticism. It therefore focused solely on a due process requirement for judicial review.⁷⁴ The Court was supported by past instances of review of due process violations including the *Tumey* decision.⁷⁵ The Court established a pattern of upholding the power of the court system to give each person a fair trial and punishment, if necessary.⁷⁶ The award in the instant case was viewed as an injustice to the Honda Corporation since the opportunity for review was effectively eliminated from the Oregon court system.⁷⁷

Not only did the instant Court look to cases involving due process claims such as *Tumey*, but it also looked back to common law traditions from both early American and English courts.⁷⁸ These past traditions gave rise to the Court's concern for protecting the defendant from undue partiality or from

Andrew L. Frey, said, "I feel extremely optimistic that we are going to win the case because Oregon is so out of step with the rest of the Anglo-American legal system.").

68. *Van Lom*, 187 Or. at 113. The judges in the *Van Lom* decision were of the opinion that the amended article of the Oregon Constitution was an ill-considered legislation. *See id.* Though the majority of the judges believed this proposition, they also knew they did not have the power or authority to subvert the obvious purpose or to refuse to apply the provisions of the amended article. *Id.* Therefore, the U.S. Supreme Court Justices might try to correct the situation that made fellow judges powerless and deem the amended article unconstitutional.

69. *Id.*

70. *See id.* at 93.

71. *See id.* at 93, 113.

72. *See cases cited supra* note 12.

73. *See cases cited supra* note 63.

74. *See Oberg I*, 114 S. Ct. at 2334.

75. *See Tumey*, 273 U.S. at 523.

76. *Oberg I*, 114 S. Ct. at 2339-40. The Court noted that very few cases have arisen in which a party complained of having been denied due process since the basic common law protections are regarded as so fundamental. In the instances where they have surfaced, most of the arguments were based on the fact that due process procedures offer too little protection. *Id.* at 2340.

77. *See id.* at 2341.

78. *See cases cited supra* notes 12, 14-15.

the passion and prejudice of the jury.⁷⁹ This concern was mentioned as recently as the *Haslip* case by Justice Scalia in his concurring opinion.⁸⁰

The Court's desire to avoid partiality, passion, and prejudice by the jury is in the forefront in the instant case. Commentaries have suggested that the instant case is big business' best chance to gain a victory over the punitive damages that have been haunting them.⁸¹ The majority recognized the important policy arguments surrounding this decision. Honda was viewed as an outsider that had a considerable amount of money, while Oberg was viewed as a local citizen who was injured by the negligent behavior of the multi-million dollar company.⁸² This bias against big businesses was bad enough, but, as Justice Stevens stated, "judicial review of the amount awarded was one of the few procedural safeguards which the common law provided against that danger."⁸³ Since this safeguard was removed by the Oregon legislature and no adequate substitute procedure was enacted, Honda did not have any protection against arbitrary awards.⁸⁴ Thus, the Oregon amendment was viewed as a violation of the Due Process Clause.

79. Eric Schapper, *Judges Against Juries — Appellate Review of Federal Civil Jury Verdicts*, 1989 WIS. L. REV. 237, 243-44. Schapper noted that there is an absence of any meaningful legal standard to determine punitive damage awards. "In the absence of more specific guidance . . . [such a vague standard] virtually invit[es] juries to punish unpopular defendants." *Id.* at 343.

80. *Haslip*, 499 U.S. at 27. Justice Scalia discussed the history of jury discretion. He argued there were no set procedures established to deal with the possibility of jury discretion in an award of damages and its amount. Even though procedural safeguards were deemed unnecessary, Justice Scalia noted several commentators who have concluded that judicial review is appropriate. *Id.*; see G. FIELD, LAW OF DAMAGES 65 (1876) ("The amount of damages . . . are necessarily largely within the discretion of the jury; the only check . . . [occurs] where it is manifest that the jury were unduly influenced by passion, prejudice, partiality, or corruption . . ."); J. SUTHERLAND, LAW OF DAMAGES 742 (1882) ("[Punitive damages] are left to the discretion of the jury, but subject to the power of the court to set aside the verdict if it is so excessive that the court may infer that the jury have been influenced by passion or prejudice.").

81. MacLachlan, *supra* note 67, at 17 (The reason for this hope is the U.S. Supreme Court's ongoing concern with the constitutional issues raised by punitive damages. *Oberg I* was the fourth punitive damage challenge case in five years to be reviewed by the Court.).

82. *Oberg I*, 114 S. Ct. at 2340-41. The Court continued to stress the importance of not permitting the arbitrary deprivation of property. The rise of large, interstate and multinational companies has aggravated the problem of bias and arbitrary awards. *Id.* at 2340. Juries have the tendency to feel that a rich, powerful, non-local entity should pay for the damages it has done to a fellow citizen. See *id.* at 2340-41.

83. *Id.* at 2341.

84. *Id.* The Respondent countered Honda's claim by pointing out four safeguards provided by the Oregon court system: (1) a limitation of punitive damages to the amount specified but no limit to the amount requested, (2) a clear and convincing standard of proof, but those who pass the standard are still subjected to the possibility of arbitrary awards, (3) Oregon courts are able to set maximum punitive damage awards, but there is no evidence to support the idea that this has ever been done in any jurisdiction, and (4) proper jury instructions, but of course, juries may disregard the instructions. *Id.*

Though the Court gave sufficient judicial tradition, case law, and concerns for justice in support of its reasoning,⁸⁵ Justice Ginsburg, in dissent, was troubled by the majority's alienation of Oregon and its punitive damage review standards.⁸⁶ Justice Ginsburg stated that the evidence given by the majority did not point to judicial review standards, but instead supported the review standards already employed by the Oregon courts.⁸⁷ *Haslip* did not give any guidance to specific measures needed to satisfy due process claims.⁸⁸ The dissent focused on the preverdict mechanisms that guided the jurors in their decision.⁸⁹ These standards as applied to *Haslip* closely guided the jurors in making their award.⁹⁰ Justice Ginsburg viewed the majority as punishing Oregon for providing preverdict measures instead of the consensus postverdict review.⁹¹

Several factors influenced Justice Ginsburg's opinion. For one, the majority's view on past history of judicial review was limited.⁹² As pointed out by Justice Scalia in *Haslip*, "no particular procedures were deemed necessary to circumscribe a jury's discretion regarding the award of [punitive] damages, or their amount."⁹³ Also, Oregon historically has done

85. *See id.* at 2341-42.

86. *See id.* at 2350 (Ginsburg, J., dissenting). Justice Ginsburg concluded that the majority's procedures of judicial review enforced against the Oregon courts were neither necessary nor proper. This opinion is supported by Justice Ginsburg's view that the Supreme Court of Oregon did not refuse to enforce federal law since Oregon's procedures adequately guided the jury. *Id.*

87. *See id.* at 2346-47. A majority of the Justices believed that the Due Process Clause imposes a limit on punitive damages. *Haslip*, 499 U.S. at 18. The *Haslip* Court also noted that there should be a meaningful and adequate review by the trial court and subsequent appellate review. *Id.* at 20. *But see Oberg II*, 316 Or. at 284 (The Supreme Court of Oregon observed that *Haslip* did not require states to subject punitive damage awards to a postverdict review, but only wanted to assure that the jury has had adequate guidance from the court.).

88. *See Haslip*, 499 U.S. at 18.

89. *See Oberg I*, 114 S. Ct. at 2341. For discussion of safeguards provided by the Oregon courts, see *supra* note 79.

90. *Oberg I*, 114 S. Ct. at 2345.

91. *See id.* at 2350.

92. *Id.* at 2348. The majority concluded that the English and early American courts generally provided judicial review of the size of punitive damage awards. In opposition, the dissent pointed out that the majority should have looked deeper into the historical inquiry of jury verdicts. *Id.*; see Glenn H. Reynolds, *Judicial Assessment of Punitive Damages, the Seventh Amendment, and the Politics of Jury Power*, 91 COLUM. L. REV. 142, 156 (1991) ("As a matter of common law, the assessment of uncertain damages during the Framing generation was a protected jury function."); Robert E. Riggs, *Constitutionalizing Punitive Damages: The Limits of Due Process*, 52 OHIO ST. L.J. 859, 899-900 (1991) ("[I]nstructions admittedly leave wide discretion to the jury in setting the amount of the award, but the conclusion does not necessarily follow that due process has been violated." Juries in early America were permitted to determine both law and fact. Due process did not dictate the abandonment of this procedure. The change occurred through common law development and legislative enactment).

93. *Haslip*, 499 U.S. at 27.

an effective job of limiting punitive damage awards.⁹⁴ Therefore, the dissent concluded that the majority's eagerness was neither necessary nor proper and the imposition of this burden upon Oregon was unjust.⁹⁵

Recently, the Court has been concerned with excessive awards handed down by juries that show signs of partiality, passion, and prejudice. This is quite relevant in the cases involving big businesses that hurt the local consumer. This problem is voiced by Justice Stevens in the majority opinion of the instant case: "Punitive damages pose an acute danger of arbitrary deprivation of property."⁹⁶ Although on the surface it might appear that Oregon provides adequate protection from arbitrary awards, as Justice Ginsburg emphasized, Oregon's deviation from the national standard left it an obvious target for judicial scrutiny. The significance of the decision in the instant case was that the Court, in effect, used Oregon to establish a policy for others to challenge the amount of punitive damages awarded against them. Also, it appears that the Court has no tolerance for state legislatures that abandon traditional and widely-upheld standards of the judicial system. The impact of the instant case is not significant in and of itself, but it does further the Court's desire to provide open access to the judicial system for parties who are denied the due process of law in their cases.

94. See Brief for Respondent at 69, *Oberg I*, 114 S. Ct. at 2331. It has been proven that Oregon's average punitive damage award for products liability is less than the national average. *Id.* The problem with this statistic is that the average is computed from only two samples, which is an inadequate test base. *But see* Michael Rustad, *In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data*, 78 IOWA L. REV. 1, 57 (1992) (Empirical evidence has shown that when states use judicial review on the size of punitive damage awards, over half of the awards are appealed. Of those, more than half result in reductions or reversals. In over 10% of the cases, the judges found the award to be excessive.).

95. *Oberg I*, 114 S. Ct. at 2350.

96. *Id.* at 2340.

