

SUPREME COURT OF THE UNITED STATES

No. 93-644

HONDA MOTOR CO., LTD., ET AL, PETITIONERS v. KARL L. OBERG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON
[June 24, 1994]

JUSTICE GINSBURG, with whom the CHIEF JUSTICE joins, dissenting.

In product liability cases, Oregon guides and limits the factfinder's discretion on the availability and amount of punitive damages. The plaintiff must establish entitlement to punitive damages, under specific substantive criteria, by clear and convincing evidence. Where the factfinder is a jury, its decision is subject to judicial review to this extent: the trial court, or an appellate court, may nullify the verdict if reversible error occurred during the trial, if the jury was improperly or inadequately instructed, or if there is no evidence to support the verdict. Absent trial error, and if there is evidence to support the award of punitive damages, however, Oregon's Constitution, Article VII, §3, provides that a properly instructed jury's verdict shall not be reexamined.¹ Oregon's procedures, I conclude, are adequate to pass the Constitution's due process threshold. I therefore dissent from the Court's judgment upsetting Oregon's disposition in this case.

¹Article VII, §3 of the Oregon Constitution reads: "In actions at law, where the value in controversy shall exceed \$200, 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."

To assess the constitutionality of Oregon's scheme, I turn first to this Court's recent opinions in *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1 (1991), and *TXO Production Corp. v. Alliance Resources Corp.*, 509 U. S. ___ (1993). The Court upheld punitive damage awards in both cases, but indicated that due process imposes an outer limit on remedies of this type. Significantly, neither decision declared any specific procedures or substantive criteria essential to satisfy due process. In *Haslip*, the Court expressed concerns about “unlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages,” but refused to “draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable.” 499 U. S., at 18. Regarding the components of “the constitutional calculus,” the Court simply referred to “general concerns of reasonableness and [the need for] adequate guidance from the court when the case is tried to a jury.” *Ibid.*

And in *TXO*, a majority agreed that a punitive damage award may be so grossly excessive as to violate the Due Process Clause. 509 U. S., at ___ (slip op., at 8–9, 13) (plurality opinion); *id.*, at ___ (slip op., at 1–2) (KENNEDY, J., concurring in part and concurring in judgment); *id.*, at ___ (slip op., at 8) (O'CONNOR, J., dissenting). In the plurality's view, however, “a judgment that is a product” of “fair procedures . . . is entitled to a strong presumption of validity”; this presumption, “persuasive reasons” indicated, “should be irrebuttable, . . . or virtually so.” *Id.*, at ___ (slip op., at 12), citing *Haslip, supra*, at 24–40 (SCALIA, J., concurring in judgment), and *id.*, at 40–42 (KENNEDY, J., concurring in judgment). The opinion stating the plurality position recalled *Haslip's* touchstone: A “concern [for] reasonableness” is what due process essentially requires. 509 U. S., at ___ (slip op., at 13), quoting *Haslip, supra*, at 18. Writing for the plurality, JUSTICE STEVENS explained:

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“[W]e do not suggest that a defendant has a substantive due process right to a correct determination of the ‘reasonableness’ of a punitive damages award. As JUSTICE O’CONNOR points out, state law generally imposes a requirement that punitive damages be ‘reasonable.’ A violation of a state law ‘reasonableness’ requirement would not, however, necessarily establish that the award is so ‘grossly excessive’ as to violate the Federal Constitution.” 509 U. S., at ___, n. 24 (slip op., at 13, n. 24) (citation omitted).

The procedures Oregon’s courts followed in this case satisfy the due process limits indicated in *Haslip* and *TXO*; the jurors were adequately guided by the trial court’s instructions, and Honda has not maintained, in its full presentation to this Court, that the award in question was “so ‘grossly excessive’ as to violate the Federal Constitution.” *TXO, supra*, at ___, n. 24 (slip op., at 13, n. 24).²

Several preverdict mechanisms channeled the jury’s discretion more tightly in this case than in either *Haslip* or *TXO*. First, providing at least some protection against unguided, utterly arbitrary jury awards, respondent Karl Oberg was permitted to recover no more than the amounts specified in the complaint, \$919,390.39 in compensatory damages and \$5

²The Supreme Court of Oregon noted that “procedural due process in the context of an award of punitive damages relates to the requirement that the procedure employed in making that award be fundamentally fair,” while the substantive limit declared by this Court relates to the size of the award. 316 Ore. 263, 280, n. 10, 851 P. 2d 1084, 1094, n. 10 (1993).

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million in punitive damages. See Ore. Rule Civ. Proc. 18B (1994); *Wiebe v. Seely*, 215 Ore. 331, 355-358, 335 P. 2d 379, 391 (1959); *Lovejoy Specialty Hosp. v. Advocates for Life, Inc.*, 121 Ore. App. 160, 167, 855 P. 2d 159, 163 (1993). The trial court properly instructed the jury on this damage cap. See 316 Ore. 263, 282, n. 11, 851 P. 2d 1084, 1095, n. 11 (1993). No provision of Oregon law appears to preclude the defendant from seeking an instruction setting a lower cap, if the evidence at trial cannot support an award in the amount demanded. Additionally, if the trial judge relates the incorrect maximum amount, a defendant who timely objects may gain modification or nullification of the verdict. See *Timber Access Industries Co. v. U. S. Plywood-Champion Papers, Inc.*, 263 Ore. 509, 525-528, 503 P. 2d 482, 490-491 (1972).³

Second, Oberg was not allowed to introduce evidence regarding Honda's wealth until he "presented evidence sufficient to justify to the court a prima facie claim of punitive damages." Ore. Rev. Stat. §41.315(2) (1991); see also §30.925(2) ("During the course of trial, evidence of the defendant's ability to pay shall not be admitted unless and until the party entitled to recover establishes a prima facie right to recover [punitive damages]."). This evidentiary rule is designed to lessen the risk "that juries will use their verdicts to express biases against big businesses." *Ante*, at 16; see also Ore. Rev. Stat. §30.925(3)(g) (1991) (requiring factfinder to take into

³The Court's contrary suggestion, *ante*, at 17, is based on *Tenold v. Weyerhaeuser Co.*, 127 Ore. App. 511, ___ P. 2d ___ (1994), a decision by an intermediate appellate court, in which the defendant does not appear to have objected to the trial court's instructions as inaccurate, incomplete, or insufficient, for failure to inform the jury concerning a statutorily-mandated \$500,000 cap on noneconomic damages.

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account “[t]he total deterrent effect of other punishment imposed upon the defendant as a result of the misconduct”).

Third, and more significant, as the trial court instructed the jury, Honda could not be found liable for puni-

tive damages unless Oberg established by “clear and convincing evidence” that Honda “show[ed] wanton disregard for the health, safety and welfare of others.” Ore. Rev. Stat. §30.925 (1991) (governing product liability actions); see also §41.315(1) (“Except as otherwise specifically provided by law, a claim for punitive damages shall be established by clear and convincing evidence.”). “[T]he clear-and-convincing evidence requirement,” which is considerably more rigorous than the standards applied by Alabama in *Haslip*⁴ and West Virginia in *TXO*,⁵ “constrain[s] the jury's discretion, limiting punitive damages to the more egregious cases.” *Haslip, supra*, at 58 (O'CONNOR, J., dissenting). Nothing in Oregon law appears to preclude a new trial order if the trial judge, informed by the jury's verdict, determines that his charge did not adequately explain what the “clear and convincing” standard means. See Ore. Rule Civ. Proc. 64G (1994) (authorizing court to grant new trial “on its own initiative”).

Fourth, and perhaps most important, in product liability cases, Oregon requires that punitive damages, if any, be awarded based on seven substantive criteria, set forth in Ore. Rev. Stat.

⁴The *Haslip* jury was told that it could award punitive damages if “reasonably satisfied from the evidence” that the defendant committed fraud. *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1, 6, n. 1 (1991).

⁵The *TXO* jury was instructed to apply a preponderance of the evidence standard. See *TXO Production Corp. v. Alliance Resources Corp.*, 509 U. S. ___, ___, n. 29 (1993) (slip op., at 18, n. 29).

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§30.925(3) (1991):

“(a) The likelihood at the time that serious harm would arise from the defendant's misconduct;

“(b) The degree of the defendant's awareness of that likelihood;

“(c) The profitability of the defendant's misconduct;

“(d) The duration of the misconduct and any concealment of it;

“(e) The attitude and conduct of the defendant upon discovery of the misconduct;

“(f) The financial condition of the defendant; and

“(g) The total deterrent effect of other punishment imposed upon the defendant as a result of the misconduct, including, but not limited to, punitive damage awards to persons in situations similar to the claimant's and the severity of criminal penalties to which the defendant has been or may be subjected.”

These substantive criteria, and the precise instructions detailing them,⁶ gave the jurors

⁶The trial court instructed the jury:

“Punitive damages: If you have found that plaintiff is entitled to general damages, you must then consider whether to award punitive damages. Punitive damages may be awarded to the plaintiff in addition to general damages to punish wrongdoers and to discourage wanton misconduct.

“In order for plaintiff to recover punitive damages against the defendant[s], the plaintiff must prove by clear and convincing evidence that defendant[s have] shown wanton disregard for the health, safety, and welfare of others. . . .

“If you decide this issue against the defendant[s], you may award punitive damages, although you are not required to do so, because punitive damages are discretionary.

“In the exercise of that discretion, you shall consider

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“adequate guidance” in making their award, see *Haslip*, 499 U. S., at 18, far more guidance than their counterparts in *Haslip*⁷ and *TXO*⁸ received. In *Haslip*, for example, the jury was told only the purpose of punitive damages (punishment and deterrence) and that an award was discretionary, not compulsory. We deemed those instructions, notable for their generality, constitutionally sufficient. 499 U. S., at

evidence, if any, of the following:

“First, the likelihood at the time of the sale [of the ATV] that serious harm would arise from defendants' misconduct.

“Number two, the degree of the defendants' awareness of that likelihood.

“Number three, the duration of the misconduct.

“Number four, the attitude and conduct of the defendant[s] upon notice of the alleged condition of the vehicle.

“Number five, the financial condition of the defendant[s].” 316 Ore., at 282, n. 11, 851 P. 2d, at 1095, n. 11.

The trial judge did not instruct the jury on §30.925(3)(c), “profitability of [Honda's] misconduct,” or §30.925(3)(g), the “total deterrent effect of other punishment” to which Honda was subject. Honda objected to an instruction on factor (3)(c), which it argued was phrased “to assume the existence of misconduct,” and expressly waived an instruction on factor (3)(g), on the ground that it had not previously been subject to punitive damages. App. to Brief for Plaintiff-Respondent in Opposition in No. S38436 (Ore.), p. 2. In its argument before the Supreme Court of Oregon, Honda did not contend that the trial court failed to instruct the jury concerning the “[§30.925(3)] criteria,” or “that the jury did not properly apply those criteria.” 316 Ore., at 282, n. 11, 851 P. 2d, at 1095, n. 11.

⁷The trial judge in *Haslip* instructed the jury:

“Now, if you find that fraud was perpetrated then in addition to compensatory damages you may in your

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19-20.

The Court's opinion in *Haslip* went on to describe the checks Alabama places on the jury's discretion *postverdict*—through excessiveness review by the trial court, and appellate review, which tests the award against specific substantive criteria. *Id.*, at 20-23. While postverdict review of that character is not available in Oregon, the seven factors against which

discretion, when I use the word discretion, I say you don't have to even find fraud, you wouldn't have to, but you may, the law says you may award an amount of money known as punitive damages.

“This amount of money is awarded to the plaintiff but it is not to compensate the plaintiff for any injury. It is to punish the defendant. Punitive means to punish or it is also called exemplary damages, which means to make an example. So, if you feel or not feel, but if you are reasonably satisfied from the evidence that the plaintiff[s] . . . ha[ve] had a fraud perpetrated upon them and as a direct result they were injured [then] in addition to compensatory damages you may in your discretion award punitive damages.

“Now, the purpose of awarding punitive or exemplary damages is to allow money recovery to the plaintiffs, . . . by way of punishment to the defendant and for the added purpose of protecting the public by deterring the defendant and others from doing such wrong in the future. Imposition of punitive damages is entirely discretionary with the jury, that means you don't have to award it unless this jury feels that you should do so.

“Should you award punitive damages, in fixing the amount, you must take into consideration the character and the degree of the wrong as shown by the evidence and necessity of preventing similar wrong.” 499 U. S., at 6, n. 1 (internal quotation marks omitted).

⁸The jury instruction in *TXO* read:

“In addition to actual or compensatory damages, the law permits the jury, under certain circumstances, to

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Alabama's Supreme Court tests punitive awards⁹ strongly resemble the statutory criteria Oregon's juries are instructed to apply. 316 Ore., at 283, and n. 12, 851 P. 2d, at 1095-1096, and n. 12. And this Court has often acknowledged, and generally respected, the presumption that juries follow the instructions they are given. See, e.g., *Shannon v. United States*, _____

make an award of punitive damages, in order to punish the wrongdoer for his misconduct, to serve as an example or warning to others not to engage in such conduct and to provide additional compensation for the conduct to which the injured parties have been subjected.

"If you find from a preponderance of the evidence that TXO Production Corp. is guilty of wanton, wilful, malicious or reckless conduct which shows an indifference to the right of others, then you may make an award of punitive damages in this case.

"In assessing punitive damages, if any, you should take into consideration all of the circumstances surrounding the particular occurrence, including the nature of the wrongdoing, the extent of the harm inflicted, the intent of the party committing the act, the wealth of the perpetrator, as well as any mitigating circumstances which may operate to reduce the amount of the damages. The object of such punishment is to deter TXO Production Corp. and others from committing like offenses in the future. Therefore the law recognizes that to in fact deter such conduct may require a larger fine upon one of large means than it would upon one of ordinary means under the same or similar circumstances." 509 U. S., at _____, n. 29 (slip op., at 18-19, n. 29).

⁹The Alabama factors are:

"(a) whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred; (b) the degree of reprehensibility of the defendant's conduct, the duration of that conduct, the

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U. S. ___, ___ (1994) (slip op., at 11-12); *Richardson v. Marsh*, 481 U. S. 200, 206 (1987).

As the Supreme Court of Oregon observed, *Haslip* “determined only that the Alabama procedure, as a whole and in its net effect, did not violate the Due Process Clause.” 316 Ore., at 284, 851 P. 2d, at 1096. The Oregon court also observed, correctly, that the Due Process Clause does not require States to subject punitive damage awards to a form of postverdict review “that includes the possibility of remittitur.”¹⁰ 316 Ore., at 284, 851 P. 2d, at 1096. Because Oregon requires the factfinder to apply §30.925's objective criteria, moreover, its procedures are perhaps more likely to prompt rational and fair punitive damage decisions than are the *post hoc* checks employed in jurisdictions following Alabama's pattern. See *Haslip*, *supra*, at 52 (O'CONNOR, J., dissenting) (“[T]he standards [applied by the Alabama Supreme Court] could assist juries to make fair, rational decisions. Unfortunately, Alabama courts do not give the[se] factors to the jury. Instead, the jury has standardless

defendant's awareness, any concealment, and the existence and frequency of similar past conduct; (c) the profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; (d) the `financial position' of the defendant; (e) all the costs of litigation; (f) the imposition of criminal sanctions on the defendant for its conduct, these to be taken in mitigation; and (g) the existence of other civil awards against the defendant for the same conduct, these also to be taken in mitigation.” 499 U. S., at 21-22, citing *Green Oil Co. v. Hornsby*, 539 So. 2d 218, 223-224 (Ala. 1989), and *Central Alabama Elec. Cooperative v. Tapley*, 546 So. 2d 371, 376-377 (Ala. 1989).

¹⁰Indeed, the compatibility of the remittitur with the Seventh Amendment was not settled until *Dimick v. Schiedt*, 293 U. S. 474 (1935).

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discretion to impose punitive damages whenever and in whatever amount it wants.”). As the Oregon court concluded, “application of objective criteria ensures that sufficiently definite and meaningful constraints are imposed on the finder of fact.” 316 Ore., at 283, 851 P. 2d, at 1096. The Oregon court also concluded that the statutory criteria, by adequately guiding the jury, worked to “ensur[e] that the resulting award is not disproportionate to a defendant's conduct and to the need to punish and deter.” *Ibid.*¹¹

The Supreme Court of Oregon's conclusions are buttressed by the availability of at least some postverdict judicial review of punitive damage awards. Oregon's courts ensure that there is evidence to support the verdict:

“If there is no evidence to support the jury's decision—in this context, no evidence that the statutory prerequisites for the award of punitive damages were met—then the trial court or the appellate courts can intervene to vacate the

¹¹Oregon juries, reported decisions indicate, rarely award punitive damages. Between 1965 and the present, awards of punitive damages have been reported in only two product liability cases involving Oregon law, including this one. See Brief for Trial Lawyers for Public Justice as *Amicus Curiae* 10, and n. 7. The punitive award in this case was about 5.4 times the amount of compensatory damages and about 258 times the plaintiff's out-of-pocket expenses. This amount is not far distant from the award upheld in *Haslip*, which was more than 4 times the amount of compensatory damages and more than 200 times the plaintiff's out-of-pocket expenses. See 499 U. S., at 23. The \$10 million award this Court sustained in *TXO*, in contrast, was more than 526 times greater than the actual damages of \$19,000. 509 U. S., at ___ (slip op., at 8).

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award. See ORCP 64B(5) (trial court may grant a new trial if the evidence is insufficient to justify the verdict or is against law); *Hill v. Garner*, 561 P. 2d 1016 (1977) (judgment notwithstanding the verdict is to be granted when there is no evidence to support the verdict); *State v. Brown*, 761 P. 2d 1300 (1988) (a fact decided by a jury may be re-examined when a reviewing court can say affirmatively that there is no evidence to support the jury's decision)." 316 Ore., at 285, 851 P. 2d, at 1096-1097 (parallel citations omitted).

The State's courts have shown no reluctance to strike punitive damage awards in cases where punitive liability is not established, so that defendant qualifies for judgment on that issue as a matter of law. See, e.g., *Badger v. Paulson Investment Co.*, 311 Ore. 14, 28-30, 803 P. 2d 1178, 1186-1187 (1991); *Andor v. United Airlines*, 303 Ore. 505, 739 P. 2d 18 (1987); *Schmidt v. Pine Tree Land Development Co.*, 291 Ore. 462, 631 P. 2d 1373 (1981).

In addition, punitive damage awards may be set aside because of flaws in jury instructions. 316 Ore., at 285, 851 P. 2d, at 1097. See, e.g., *Honeywell v. Sterling*

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Furniture Co., 310 Ore. 206, 210-214, 797 P. 2d 1019, 1021-1023 (1990) (setting aside punitive damage award because it was prejudicial error to instruct jury that a portion of any award would be used to pay plaintiff's attorney fees and that another portion would go to State's common injury fund). As the Court acknowledges, "proper jury instructio[n] is a well-established and, of course, important check against excessive awards." *Ante*, at 17.

In short, Oregon has enacted legal standards confining punitive damage awards in product liability cases. These state standards are judicially enforced by means of comparatively comprehensive preverdict procedures but markedly limited postverdict review, for Oregon has elected to make factfinding, once supporting evidence is produced, the province of the jury. Cf. *Chicago, R. I. & P. R. Co. v. Cole*, 251 U. S. 54, 56 (1919) (upholding against due process challenge Oklahoma Constitution's assignment of contributory negligence and assumption of risk defenses to jury's unreviewable decision; Court recognized State's prerogative to "confer larger powers upon a jury than those that generally prevail"); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 479 (1981) (STEVENS, J., dissenting) (observing that "allocation of functions within the structure of a state government" is ordinarily "a matter for the State to determine"). The Court today invalidates this choice, largely because it concludes that English and early American courts generally provided judicial review of the size of punitive damage awards. See *ante*, at 5-10. The Court's account of the relevant history is not compelling.

I am not as confident as the Court about either the

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clarity of early American common law, or its import. Tellingly, the Court barely acknowledges the large authority exercised by American juries in the 18th and 19th centuries. In the early years of our Nation, juries “usually possessed the power to determine both law and fact.” Nelson, *The Eighteenth-Century Background of John Marshall's Constitutional Jurisprudence*, 76 Mich. L. Rev. 893, 905 (1978); see, e.g., *Georgia v. Brailsford*, 3 Dall. 1, 4 (1794) (Chief Justice John Jay, trying case in which State was party, instructed jury it had authority “to determine the law as well as the fact in controversy”).¹² And at the time trial by jury was recognized as the constitutional right of parties “[i]n [s]uits at common law,” U. S. Const., Amdt. 7, the assessment of “uncertain damages” was regarded, generally, as exclusively a jury function. See Note, *Judicial Assessment of Punitive Damages, the Seventh Amendment, and the Politics of Jury Power*, 91 Colum. L. Rev. 142, 156, and n. 69 (1991); see also *id.*, at 156-158, 163, and n. 112.

More revealing, the Court notably contracts the scope of its inquiry. It asks: Did common law judges claim the power to overturn jury verdicts they viewed as excessive? But full and fair historical inquiry ought to be wider. The Court should inspect, comprehensively and comparatively, the procedures employed—at trial *and* on appeal—to fix the amount of punitive damages.¹³ Evaluated in this manner, Oregon's scheme affords defendants like Honda *more* procedural safe-

¹²Not until *Sparf v. United States*, 156 U. S. 51, 102 (1895), was the jury's power to decide the law conclusively rejected for the federal courts. See Riggs, *Constitutionalizing Punitive Damages: The Limits of Due Process*, 52 Ohio St. L. J. 859, 900 (1991).

¹³An inquiry of this order is akin to the one made in *Haslip*. See *supra*, at 8-9.

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guards than 19th-century law provided.

As detailed *supra*, at 5–6, Oregon instructs juries to decide punitive damage issues based on seven substantive factors and a clear and convincing evidence standard. When the Fourteenth Amendment was adopted in 1868, in contrast, “no particular procedures were deemed necessary to circumscribe a jury’s discretion regarding the award of [punitive] damages, or their amount.” *Haslip*, 499 U. S., at 27 (SCALIA, J., concurring in judgment). The responsibility entrusted to the jury surely was not guided by instructions of the kind Oregon has enacted. Compare 1 J. Sutherland, *Law of Damages* 720 (1882) (“If, in committing the wrong complained of, [the defendant] acted recklessly, or wilfully and maliciously, with a design to oppress and injure the plaintiff, the jury in fixing the damages may disregard the rule of compensation; and, beyond that, may, as a punishment of the defendant, and as a protection to society against a violation of personal rights and social order, award such additional damages as in their discretion they may deem proper.”), with Ore. Rev. Stat. §30-925 (1991) (requiring jury to consider, *inter alia*, “likelihood at the time that serious harm would arise from the defendant’s misconduct”; “degree of the defendant’s awareness of that likelihood”; “profitability of the defendant’s misconduct”; “duration of the misconduct and any concealment of it”).

Furthermore, common-law courts reviewed punitive damage verdicts extremely deferentially, if at all. See, e.g., *Day v. Woodworth*, 13 How. 363, 371 (1852) (assessment of “exemplary, punitive, or vindictive damages . . . has been always left to the discretion of the jury, as the degree of punishment to be thus inflicted must depend on the peculiar circumstances of each case”); *Missouri Pacific R. Co. v. Humes*, 115 U. S. 512, 521 (1885) (“[t]he discretion of the jury in such cases is not controlled by any very

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definite rules"); *Barry v. Edmunds*, 116 U. S. 550, 565 (1886) (in "actions for torts where no precise rule of law fixes the recoverable damages, it is the peculiar function of the jury to determine the amount by their verdict"). True, 19th-century judges occasionally asserted that they had authority to overturn damage awards upon concluding, from the size of an award, that the jury's decision must have been based on "partiality" or "passion and prejudice." *Ante*, at 8-9. But courts rarely *exercised* this authority. See T. Sedgwick, *Measure of Damages* 707 (5th ed. 1869) (power "very sparingly used").

Because Oregon's procedures assure "adequate guidance from the court when the case is tried to a jury," *Haslip*, 499 U. S., at 18, this Court has no cause to disturb the judgment in this instance, for Honda presses here only a *procedural* due process claim. True, in a footnote to its petition for certiorari, not repeated in its briefs, Honda attributed to this Court an "assumption that procedural due process requires [judicial] review of *both* federal substantive due process and state-law excessiveness challenges to the size of an award." Pet. for Cert. 16, n. 10 (emphasis in original). But the assertion regarding "state-law excessiveness challenges" is extraordinary, for this Court has never held that the Due Process Clause requires a State's courts to police jury factfindings to ensure their conformity with state law. See *Chicago, R. I. & P. R. Co. v. Cole*, 251 U. S., at 56. And, as earlier observed, see *supra*, at 3, the plurality opinion in *TXO* disavowed the suggestion that a defendant has a federal due process right to a correct determination under state law of the "reasonableness" of a punitive damages award. 509 U. S., at ___, n. 24 (slip op., at 13, n. 24).

Honda further asserted in its certiorari petition foot-

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note:

“Surely . . . due process (not to mention Supremacy Clause principles) requires, at a minimum, that state courts entertain and pass on the federal-law contention that a particular punitive verdict is so grossly excessive as to violate substantive due process. Oregon's refusal to provide even that limited form of review is particularly indefensible.” Pet. for Cert. 16, n. 10.

But Honda points to no definitive Oregon pronouncement postdating this Court's precedent-setting decisions in *Haslip* and *TXO* demonstrating the hypothesized refusal to pass on a federal-law contention.¹⁴

It may be that Oregon's procedures guide juries so well that the “grossly excessive” verdict Honda projects in its certiorari petition footnote never materializes. Cf. n. 11, *supra* (between 1965 and the present, awards of punitive damages in Oregon have been reported in only two products liability cases, including this one). If, however, in some future case, a plea is plausibly made that a particular punitive damage award is not merely excessive, but “so ‘grossly excessive’ as to violate the Federal Constitution,” *TXO*, 509 U. S., at ___, n. 24 (slip op., at 13, n. 24), and Oregon's judiciary nevertheless insists that it is powerless to consider the plea, this Court might have cause to grant review. Cf. *Testa v. Katt*, 330 U. S. 386 (1947) (ruling on obligation of state

¹⁴In its 1949 decision in *Van Lom v. Schneiderman*, 187 Ore. 89, 210 P. 2d 461, the Supreme Court of Oregon merely held that it lacked authority to order a new trial even though an award of damages was excessive under *state law*. See *ante*, at 1 (SCALIA, J., concurring). No federal limit had yet been recognized, and the *Van Lom* court had no occasion to consider its obligation to check jury verdicts deemed excessive under *federal law*.

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courts to enforce federal law). No such case is before us today, nor does Honda, in this Court, maintain otherwise. See 316 Ore., at 286, n. 14, 851 P. 2d, at 1097, n. 14; n. 11, *supra* (size of award against Honda does not appear to be out of line with awards upheld in *Haslip* and *TXO*).

To summarize: Oregon's procedures adequately guide the jury charged with the responsibility to determine a plaintiff's qualification for, and the amount of, punitive damages, and on that account do not deny defendants procedural due process; Oregon's Supreme Court correctly refused to rule that "an award of punitive damages, to comport with the requirements of the Due Process Clause, *always* must be subject to a form of post-verdict or appellate review" for excessiveness, 316 Ore., at 284, 851 P. 2d, at 1096 (emphasis added); the verdict in this particular case, considered in light of this Court's decisions in *Haslip* and *TXO*, hardly appears "so `grossly excessive' as to violate the substantive component of the Due Process Clause," *TXO*, 509 U. S., at ___ (slip op., at 13). Accordingly, the Court's procedural directive to the state court is neither necessary nor proper. The Supreme Court of Oregon has not refused to enforce federal law, and I would affirm its judgment.