SUPREME COURT OF THE UNITED STATES

No. 92–479

TXO PRODUCTION CORP., PETITIONER *v.* ALLIANCE RESOURCES CORP., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[June 25, 1993]

JUSTICE STEVENS announced the judgment of the Court and delivered an opinion in which THE CHIEF JUSTICE and JUSTICE BLACKMUN join, and in which JUSTICE KENNEDY joins as to Parts I and IV.

In a common-law action for slander of title, respondents obtained a judgment against petitioner for $19,000 in actual damages and $10 million in punitive damages. The question we granted certiorari to decide is whether that punitive damages award violates the Due Process Clause of the Fourteenth Amendment, either because its amount is excessive or because it is the product of an unfair procedure.

On August 23, 1985, TXO Production Corp. (TXO) commenced this litigation by filing a complaint in the Circuit Court of McDowell County, West Virginia, for a declaratory judgment removing a cloud on title to an interest in oil and gas development rights. Respondents, including Alliance Resources Corp. (Alliance), filed a counterclaim for slander of title that went to trial before a jury in June 1990. The jury verdict in respondents' favor, which has been affirmed by the Supreme Court of Appeals of West Virginia, makes it appropriate to accept respondents' version of disputed issues of fact.

In 1984, geologists employed by TXO concluded that the recovery of oil and gas under the surface of a

1,002.74 acre tract of land known as the "Blevins Tract" would be extremely profitable. They strongly recommended that TXO—a large company that was engaged in oil and gas production in 25 States—obtain the rights to develop the oil and gas resources on the Blevins Tract.

Those rights were then controlled by Alliance.[1] Prodded by its geologists, TXO approached Alliance with what Alliance considered to be a "`phenomenal offer.'" 187 W. Va. 457, 462, 419 S. E. 2d 870, 875 (1992). TXO would pay Alliance $20 per acre in cash, pay 22 percent of the oil and gas revenues in royalties, and pay all of the development costs. On April 2, 1985, Alliance accepted TXO's offer, agreeing to assign its interest in the Tract to TXO. With respect to title to the property, Alliance agreed to return the consideration paid to it if TXO's attorney determined that "title had failed."[2]

Shortly after the agreement was signed, TXO's attorneys discovered a 1958 deed conveying certain mineral rights in the Tract from respondent Tug Fork Land Company, a predecessor in interest of Alliance, to a coal operator named Leo J. Signaigo, Jr., who had later conveyed those rights to the Hawley Coal Mines Company, which had, in turn, reconveyed them to the

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[1]Alliance was the assignee of a leasehold interest that respondents George King and Grover C. Goode, doing business as Georgia Fuels, had obtained from respondent Tug Fork Land Company. Georgia Fuels reserved an overriding royalty interest in the lease.

[2]The agreement provided, in pertinent part: "Assignor [Alliance] hereby warrants title to the extent that in the event of conducting title examination of the assigned acreage, Assignee's examining attorney determines that title has failed to all or any part of the assigned acreage, Assignor will reimburse to Assignee the consideration paid to it for any such lands to which title is determined to have failed." See 187 W. Va., at 463, n. 1, 419 S. E. 2d, at 876, n. 1.

Virginia Crews Coal Company (Virginia Crews). Interviews with Signaigo, and with representatives of Hawley and Virginia Crews, established that the parties all understood that only the right to mine coal had been involved in those transactions; none of them claimed any interest in oil or gas development rights. Moreover, the text of the 1958 deed made it "perfectly clear" that the grantor had reserved "all the oil and gas underlying" the Blevins Tract.[3]

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[3]The West Virginia Supreme Court "unequivocally [found] that the deed was unambiguous," *id.,* at 464, 419 S. E. 2d, at 877, stating that "[a]lthough the deed does not demonstrate the most artful drafting, it does *clearly reserve all of the oil and gas under the Blevins Tract to Tug Fork Land Company*." *Id.*, at 463–464, 419 S. E. 2d, at 876–877 (emphasis in original). The entire deed is reprinted as Appendix A to the opinion of the State Supreme Court. See *id.*, at 467–471, 419 S. E. 2d, at 890–894.

TXO first advised Alliance of the "distinct possibility or probability" that its "leasehold title fails" in July 1985.[4] In the meantime, despite its knowledge that any claim that the 1958 deed created a cloud on title to the oil and gas development rights would have been "frivolous,"[5] TXO made two attempts to lend substance to such a claim. First, after unsuccessfully trying to convince Virginia Crews that it had an interest in the oil and gas, TXO paid the company $6,000 for a quitclaim deed conveying whatever interest it might have to TXO. TXO recorded the deed without advising Alliance.[6] Second, TXO unsuccessfully attempted to induce Mr. Signaigo to execute a false affidavit indicating that the 1958 deed might have included oil and gas rights.

On July 12, after having recording the quitclaim deed, TXO wrote to Alliance asserting that there was a title objection and implying that TXO might well have acquired the oil and gas rights from Virginia

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[4]See Plaintiff's Exhibit No. 4., reprinted in App. to Reply Brief for Petitioner 1a.

[5]In the words of the West Virginia Supreme Court: "In this case, TXO Production Corporation, a subsidiary of USX, knowingly and intentionally brought a frivolous declaratory judgment action against the appellees to clear a purported cloud on title." 187 W. Va. 457, 462, 419 S. E. 2d 870, 875 (1992).

[6]According to an internal TXO memorandum, TXO viewed the quitclaim deed as offering "a chance of the court conferring TXO with 100% interest in the O[il] & G[as] estate as opposed to having a 78% net lease if the court rules in favor of Tug Fork's title." Plaintiff's Exhibit No. 8 (TXO Production Corp. Inter-Office Memorandum (May 30, 1985)). The West Virginia Supreme Court referred to TXO's acquisition and recording of the quitclaim deed as nothing less than "an attempt to steal [Alliance's] land." 187 W. Va., at 468, 419 S. E. 2d, at 881.

Crews. It then arranged a meeting in August and attempted to renegotiate the royalty arrangement. When the negotiations were unsuccessful, TXO commenced this litigation. According to the West Virginia Supreme Court of Appeals, TXO "knowingly and intentionally brought a frivolous declaratory judgment action" when its "real intent" was "to reduce the royalty payments under a 1,002.74 acre oil and gas lease," and thereby "increas[e] its interest in the oil and gas rights."[7]

TXO's declaratory judgment action was decided on the basis of the parties' written submissions. The court granted respondents' motion to prohibit TXO from introducing expert and extrinsic evidence concerning the meaning of the 1958 deed to Signaigo because the deed itself was unambiguous. On the basis of the written record, the court found that TXO had asserted a claim to title to the oil and gas under the Blevins Tract by virtue of the quitclaim deed from Virginia Crews, App. 15, but that the deed was a "nullity."[8]

The counterclaim for slander of title was subsequently tried to a jury. In addition to the evidence that TXO knew that Alliance had good title to the oil and gas and that TXO had acted in bad faith when it advanced a claim on the basis of the worthless quitclaim deed in an effort to renegotiate

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[7] *Id.,* at 462, 464, 419 S. E. 2d, at 875, 877.

[8] "The Court further finds, as a matter of law, that TXO Production Corp. obtained no interest or title to the oil and gas underlying the 1,002.74 acres in question from Virginia Crews Coal Company by reason of the quit claim deed in question. The quit claim deed of Virginia Crews Coal Company conveyed no title to TXO Production Corp. because Virginia Crews Coal Company obtained no title to the oil and gas from Hawley Coal Mining Corporation and said quit claim deed is, therefore, a nullity." App. 18.

its royalty arrangement, Alliance introduced evidence showing that TXO was a large company in its own right and a wholly owned subsidiary of an even larger company;[9] that the anticipated gross revenues from oil and gas development—and therefore the amount of royalties that TXO sought to renegotiate—were substantial;[10] and that TXO had engaged in similar nefarious activities in its business dealings in other

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[9]Because TXO had refused to disclose any financial records in response to Alliance's discovery requests, Alliance employed an expert witness who analyzed public financial statements of TXO's parent, USX Corporation; he estimated that the TXO division of USX had a net worth of between "$2.2 billion and $2.5 billion." 187 W. Va., at 477, 419 S. E. 2d, at 890. Although TXO objected to the evidence as including assets of affiliates, it did not offer any rebuttal testimony on that issue. *Ibid.*

[10]Respondents introduced expert testimony demonstrating that the Blevins Tract could support between 15 and 25 wells. Tr. 98–99. A TXO executive confirmed that TXO intended, when it acquired the rights to develop the Blevins Tract, to develop multiple wells. *Id.*, at 673. Respondents also introduced an internal TXO memorandum, dated April 29, 1985, which showed that benchmark wells located near the Blevins Tract had reserves of 500,000 Mcf, and that the prevailing market rate was $3.00 Mcf. Trial testimony demonstrated that TXO was optimistic that the Blevins Tract would be quite profitable. See Tr. 672–673 (testimony of TXO official that the Blevins Tract was a good prospect, that it presented a "reasonably good opportunity," and that it offered the potential for the development of numerous wells).

Putting these figures together, respondents contend that TXO anticipated revenues of as high as $1.5 million for each well developed on the Tract. Brief for

parts of the country. *Id.,* at 468–470, 419 S. E. 2d, at 881–883.

The jury's verdict of $19,000 in actual damages was based on Alliance's cost of defending the declaratory judgment action. It is fair to infer that the punitive damages award of $10 million was based on other evidence.

In support of motions for judgment notwithstanding the verdict and for remittitur, TXO argued that the punitive damages award violated the Due Process Clause. Counsel contended that under the "general punitive damage instruction given in this case, the jury was left to their own devices without any yardstick as to what was a reasonable punitive damage award. And for that reason, a vagueness, lack of guideline and the lack of any requirement of a reasonable relationship between the actual injury and the punitive damage award, in essence, would cause the Court or should cause the Court to set it aside on Constitutional grounds."[11] In response, counsel for Alliance argued that the constitutional objection had been waived, that the misconduct was particularly egregious,[12] and that the award was not excessive. The trial court denied the motions without opinion

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Respondents 3. Further extrapolating, respondents contend that "the value of the total income stream that TXO would expect from the Blevins Tract was somewhere between $22.5 million (with 15 wells) and $37.5 million (with 25 wells)." *Id.*, at 4.

[11]App. to Pet. for Cert. 64a.

[12]In response to TXO's attempt to distinguish cases involving roughly comparable awards on the ground that they involved "egregious" conduct, the trial judge had interjected: "What could be more egregious than the vice president of a company saying, well, testifying and saying that he knew all along that this property belonged to Tug Fork?" *Id.,* at 66a.

and TXO appealed.[13]

On appeal, TXO assigned three primary errors: (1) that no cause of action for slander of title existed in West Virginia or had been established by the evidence; (2) that the West Virginia Rules of Evidence were violated by the admission of testimony of lawyers involved in litigation against TXO in other States to show TXO's wrongful intent; and (3) that the award of punitive damages violated the Due Process Clause as interpreted in our opinion in *Pacific Mutual Life Ins. Co.* v. *Haslip*, 499 U. S. 1 (1991), and in the West Virginia Supreme Court of Appeals' recent decision in *Garnes* v. *Fleming Landfill, Inc.*, 186 W. Va. 656, 413 S. E. 2d 897 (1991). The State Supreme Court of Appeals affirmed.

The Court first disposed of the state-law issues.[14] It introduced its discussion of the federal issue by describing the kinds of defendants against whom punitive damages had been awarded after our decision in *Haslip*.[15] Turning to the facts of this case,

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[13]*Id.*, at 71a–72a.

[14]"Slander of title," the Court noted, "long has been recognized as a common law cause of action." 187 W. Va., at 465, 419 S. E. 2d, at 878. The Court found that respondents had demonstrated all the elements of the tort: That TXO, by recording the frivolous quitclaim deed, had published a false statement derogatory to respondents' title, had done so with "malice," and had caused special damages, here the attorneys fees, as a result of its attack on respondents' interest in the oil and gas development rights. See *id.*, at 466–468, 419 S. E. 2d, at 879–881.

[15]"We have examined all of the punitive damages opinions issued since *Haslip* was decided in an attempt to find some pattern in what courts find reasonable. Generally, the cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants

the Court stated that the application of its "reasonable relationship" test required it to consider these three factors:

> "(1) the potential harm that TXO's actions could have caused; (2) the maliciousness of TXO's actions; and (3) the penalty necessary to discourage TXO from undertaking such endeavors in the future." 187 W. Va., at 476, 419 S. E. 2d, at 889.

It held that each of those factors supported the award in this case, stating:

> "The type of *fraudulent* action *intentionally* undertaken by TXO in this case could potentially cause millions of dollars in damages to other victims. As for the reprehensibility of TXO's conduct, we can say no more than we have already said, and we believe the jury's verdict says more than we could say in an opinion twice this length. Just as important, an award of this magnitude is necessary to discourage TXO from continuing its pattern and practice of fraud, trickery and deceit." *Ibid.* (emphasis in original).

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who could have caused a great deal of harm by their actions but who actually caused minimal harm." *Id.,* at 474–475, 419 S. E. 2d, at 887–886. In a concurring opinion two Justices criticized that categorization and stated that West Virginia's traditional rule summarizing the type of conduct that would give rise to punitive damages was better stated in the following syllabus:

"`In actions of tort, where gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others appear, or where legislative enactment authorizes, it, the jury may assess exemplary, punitive, or vindictive damages. . . .'" *Id.*, at 484, 419 S. E. 2d, at 895.

We granted certiorari, 506 U. S. ___ (1992), and now affirm.

TXO first argues that a $10 million punitive damages award—an award 526 times greater than the actual damages awarded by the jury—is so excessive that it must be deemed an arbitrary deprivation of property without due process of law.

TXO correctly points out that several of our opinions have stated that the Due Process Clause of the Fourteenth Amendment imposes substantive limits "beyond which penalties may not go." *Seaboard Air Line R. Co.* v. *Seegers*, 207 U. S. 73, 78 (1907). See also *St. Louis I. M. & S. R. Co.* v. *Williams*, 251 U. S. 63, 66–67 (1919); *Standard Oil Co. of Indiana* v. *Missouri*, 224 U. S. 270, 286 (1912).[16] Moreover, in *Southwestern Telegraph & Telephone Co.* v. *Danaher*, 238 U. S. 482 (1915), the Court actually set aside a penalty imposed on a telephone company on the ground that it was so "plainly arbitrary and oppressive" as to violate the Due Process Clause. *Id.*, at 491.[17] In an earlier case the Court had stated that

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[16]In each of those cases, the Court actually found no constitutional violation. Thus, in the *Seaboard Air Line R. Co.* case, the Court concluded:

"We know there are limits beyond which penalties may not go—even in cases where classification is legitimate—but we are not prepared to hold that the amount of penalty imposed is so great or the length of time within which the adjustment and payment are to be made is so short that the act imposing the penalty and fixing the time is beyond the power of the State." 207 U. S., at 78–79.

[17]In doing so, however, the Court emphasized the fact that the Company was punished for conduct that had been undertaken in complete good faith. It noted:

"There was no intentional wrongdoing; no departure from any prescribed or known standard of action, and

it would not review state action fixing the penalties for unlawful conduct unless "the fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law." *Waters-Pierce Oil Co.* v. *Texas (No. 1)*, 212 U. S. 86, 111 (1909).

While respondents "unabashedly" denigrate those cases as "*Lochner*–era precedents,"[18] they overlook the fact that the Justices who had dissented in the *Lochner* case itself joined those opinions.[19] More

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no reckless conduct. Some regulation establishing a mode of inducing prompt payment of the monthly rentals was necessary. It is not as if the company had been free to act or not as it chose. It was engaged in a public service which could not be neglected. The protection of its own revenues and justice to its paying patrons required that something be done. It acted by adopting the regulation and then impartially enforcing it. There was no mode of judicially testing the regulation's reasonableness in advance of acting under it, and, as we have seen, it had the support of repeated adjudications in other jurisdictions. In these circumstances to inflict upon the company penalties aggregating $6,300 was so plainly arbitrary and oppressive as to be nothing short of a taking of its property without due process of law." 238 U. S., at 490–491.

[18]See Brief for Respondents 17–18.

[19]Justices Holmes, Harlan, White, and Day, dissented in *Lochner* v. *New York*, 198 U. S. 45 (1905). See *id.*, at 65, 75. In all of the cases relied on by TXO, there were only two solitary dissents. Ironically, one of the two was that of Justice Peckham, the author of the majority opinion in *Lochner*. See *Seaboard Airline R. Co.* v. *Seegers,* 207 U. S. 73, 79 (1907); 198 U. S., at 52. The comparison requires two caveats. Justice Harlan died in the fall of 1911, and therefore only participated in the *Seaboard Air Line* and *Waters-Pierce* cases. Also, Justice Day did not participate in

importantly, respondents do not dispute the proposition that the Fourteenth Amendment imposes a substantive limit on the amount of a punitive damages award. Brief for Respondents 17. They contend, however, that the standard of review should be the same standard of rational basis scrutiny that is appropriate for reviewing state economic legislation.

TXO, on the other hand, argues that punitive damages awards should be scrutinized more strictly than legislative penalties because they are typically assessed without any legislative guidance expressing the considered judgment of the elected representatives of the community.[20] TXO urges that we apply a form of heightened scrutiny, the first step of which is to apply certain "objective" criteria to determine whether a punitive award presumptively violates those notions of "fundamental fairness" inherent in the concept of due process of law. Relying heavily on the plurality opinion in *Schad* v. *Arizona*, 501 U. S. ___ (1991), petitioner argues that "`history and widely shared practice [are] concrete indicators of what fundamental fairness and rationality require,'" Brief for Petitioner 15–16 (quoting *Schad*, *supra*, at ___ (plurality opinion) (slip op., at 13), and that therefore we should examine, as "objective" criteria of fairness, (1) awards of punitive damages upheld against other defendants in the same jurisdiction, (2) awards upheld for similar conduct in other jurisdictions, (3) legislative penalty decisions with respect to similar conduct, and (4) the relationship of prior punitive awards to the associated compensatory awards. Brief for Petitioner 16.[21]

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the *Standard Oil* case.

[20]Brief for Petitioner 13–14.

[21]As counsel for petitioner noted at oral argument, these objective criteria in part track the analysis of Justice Powell's opinion for the Court in *Solem* v. *Helm*, 463 U. S. 277, 290–292 (1983). See Tr. of Oral

Under petitioner's proposed framework, when this inquiry demonstrates that an award "exceeds the bounds of contemporary and historical practice by *orders of magnitude*," *id.*, at 21 (emphasis in original), that award must be struck down as arbitrary and excessive unless there is a "compelling and particularized justification" for an award of such size.[22]

The parties' desire to formulate a "test" for determining whether a particular punitive award is "grossly excessive" is understandable. Nonetheless, we find neither formulation satisfactory. Under respondents' rational basis standard, apparently *any* award that would serve the legitimate state interest in deterring or punishing wrongful conduct, no matter how large, would be acceptable. On the other hand, we reject the premise underlying TXO's invocation of heightened scrutiny. The review of a jury's award for arbitrariness and the review of legislation surely are significantly different. Still, it is not correct to assume that the safeguards in the legislative process have no counterpart in the judicial process. The members of the jury were determined to be impartial before they were allowed to sit, their assessment of damages was the product of collective deliberation based on evidence and the arguments of adversaries, their

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Arg. 26.

[22]Applying this "test," TXO concludes (not surprisingly) that the award in this case exceeds prior awards given both within the state of West Virginia and in other jurisdictions in allegedly comparable circumstances, and cannot be defended as rationally related to a state interest in either retribution or deterrence. The punitive award in this case, petitioner contends, is thus supported only by West Virginia's patently illegitimate interest in redistributing wealth away from a large, out-of-state corporation.

award was reviewed and upheld by the trial judge who also heard the testimony, and it was affirmed by a unanimous decision of the State Supreme Court of Appeals. Assuming that fair procedures were followed, a judgment that is a product of that process is entitled to a strong presumption of validity. Indeed, there are persuasive reasons for suggesting that the presumption should be irrebuttable, see *Haslip*, 499 U. S., at 24–40 (SCALIA, J., concurring in judgment), or virtually so, *id.*, at 40–42 (KENNEDY, J., concurring in judgment).

Nor are we persuaded that reliance on petitioner's "objective" criteria is the proper course to follow. We have, of course, relied on history and "widely shared practice" as a guide to determining whether a particular state practice so departs from an accepted norm as to be presumptively violative of due process, see *Schad*, *supra*, at ___ (plurality opinion) (slip op., at 13–17), and whether a term of imprisonment under certain circumstances is cruel and unusual punishment, see *Solem* v. *Helm*, 463 U. S. 277, 290–292 (1983). We question, however, the utility of such a comparative approach *as a test* for assessing whether a particular punitive award is presumptively unconstitutional.

It is a relatively straightforward task to draw intrajurisdictional and interjurisdictional comparisons on such matters as the definition of first-degree murder *(Schad)* or the penalty imposed on nonviolent repeat offenders *(Solem)*. The same cannot be said of the task of drawing such comparisons with regard to punitive damages awards by juries. Such awards are the product of numerous, and sometimes intangible, factors; a jury imposing a punitive damages award must make a qualitative assessment based on a host of facts and circumstances unique to the particular case before it. Because no two cases are truly identical, meaningful comparisons of such awards are difficult to make. Cf. *Haslip*, *supra*, at 41–

42 (KENNEDY, J., concurring in judgment). Such analysis might be useful in considering whether a state practice of permitting juries to rely on a particular factor, such as the defendant's out-state status, would violate due process.[23] As an analytical approach to assessing a particular award, however, we are skeptical. Thus, while we do not rule out the possibility that the fact that an award is significantly larger than those in apparently similar circumstances might, in a given case, be one of many relevant considerations, we are not prepared to enshrine petitioner's comparative approach in a "test" for assessing the constitutionality of punitive damages awards.

In the end, then, in determining whether a particular award is so "grossly excessive" as to violate the Due Process Clause of the Fourteenth Amendment, *Waters-Pierce Oil Co.*, 212 U. S., at 111, we return to what we said two Terms ago in *Haslip:* "We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of reasonableness . . . properly enter[s] into the constitutional calculus." 499 U. S., at 18. And, to echo *Haslip* once again, it is with this concern for reasonableness in mind that we turn to petitioner's argument that the punitive award in this case was so "grossly excessive" as to violate the substantive component of the Due Process Clause.[24]

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[23]Of course, such a state policy would likely be subject to challenge on other grounds as well.

[24]JUSTICE SCALIA's assertion notwithstanding, see *post*, at 2, we 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

In support of its submission that this award is "grossly excessive," TXO places its primary emphasis on the fact that it is over 526 times as large as the actual damages award. TXO correctly notes that state courts have long held that "exemplary damages allowed should bear some proportion to the real damage sustained."[25] Moreover, in our recent decision in *Haslip*, *supra*, in which we upheld a punitive damages award of four times the amount of compensatory damages, we noted that that award "may be close to the line" of constitutional permissibility. *Id.*, at 23. Following that decision, the West Virginia Supreme Court of Appeals had also observed

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damages be "reasonable." See *post*, at 4–8. 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. Furthermore, the fact that our cases have recognized for almost a century that the Due Process Clause of the Fourteenth Amendment imposes an outer limit on such an award does not, of course, make that clause "the secret repository of all sorts of other, unenumerated, substantive rights," *post*, at 2 (SCALIA, J., concurring in judgment). Indeed, it is ironic that JUSTICE SCALIA acknowledges that the Due Process Clause of the Fourteenth Amendment incorporates substantive guarantees of the Bill of Rights while relying on the enumeration of one of those rights (the Excessive Fines Clause of the Eighth Amendment) as evidence that such a right has no counterpart in the Due Process Clause. *Post*, at 2.

[25] *Grant* v. *McDonogh*, 7 La. Ann. 447, 448 (1852); *Hunter* v. *Kansas City R. Co.,* 213 Mo. App. 233, 245, 248 S. W. 998, 1002 (1923); *Mobile & Montgomery R. Co.* v. *Ashcraft*, 48 Ala. 15, 33 (1872); *P. J. Willis & Bro.* v. *McNeill*, 57 Tex. 465, 480 (1882).

that as "a matter of fundamental fairness, punitive damages should bear a reasonable relationship to compensatory damages." *Garnes* v. *Fleming Landfill, Inc.,* 186 W. Va., at 668, 413 S. E. 2d, at 909.

That relationship, however, was only one of several factors that the State Court mentioned in its *Garnes* opinion. Earlier in its opinion it gave this example:

> "For instance, a man wildly fires a gun into a crowd. By sheer chance, no one is injured and the only damage is to a $10 pair of glasses. A jury reasonably could find only $10 in compensatory damages, but thousands of dollars in punitive damages to teach a duty of care. We would allow a jury to impose substantial punitive damages in order to discourage future bad acts." *Id.*, at 661, 413 S. E. 2d, at 902 (citing C. Morris, Punitive Damages in Tort Cases, 44 Harv. L. Rev. 1173, 1181 (1931)).

When the Court identified the several factors that should be mentioned in instructions to the jury, the first one that it mentioned reflected that example. It said:

> "Punitive damages should bear a reasonable relationship to the harm *that is likely to occur from the defendant's conduct* as well as to the harm that actually has occurred. If the defendant's actions caused *or would likely cause* in a similar situation only slight harm, the damages should be relatively small. If the harm is grievous, the damages should be much greater." 186 W. Va., at 668, 413 S. E. 2d, at 909 (emphasis added).

Taking account of the potential harm that might result from the defendant's conduct in calculating punitive damages was consistent with the views we expressed in *Haslip, supra*. In that case we endorsed the standards that the Alabama Supreme Court had previously announced, one of which was "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," *id.,* at 21 (emphasis added).

Thus, both State Supreme Courts and this Court have eschewed an approach that concentrates entirely on the relationship between actual and punitive damages. It is appropriate to consider the magnitude of the *potential harm* that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred. In this case the State Supreme Court of Appeals concluded that TXO's pattern of behavior "could potentially cause millions of dollars in damages to other victims."[26] Moreover, respondents argue that the record evidence would support a finding that Alliance's 22 percent share of the projected revenues from the full development of the oil and gas rights amounted to between $5 and $8.3 million, depending on how many wells were developed.[27] Even if these figures are exaggerated—as TXO persuasively argues, see Reply Brief for Petitioner 9–12—the jury could well have believed that TXO was seeking a multimillion dollar reduction in its potential royalty obligation. In fact, in making their closing arguments to the jury, counsel for respondents stressed, in addition to TXO's vast wealth, the tremendous financial gains that TXO hoped to achieve through its "elaborate scheme." Counsel for Alliance argued:

> "They wouldn't have gone to this elaborate scheme—No, they wouldn't now, because they thought this was a huge, gonna be a huge money-making lease. Gonna puts lots of wells on it. That's why it was worth the scheme. And the

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[26]187 W. Va, at 476, 419 S. E. 2d, at 889.

[27]See n. 10, *supra*.

> punishment should fit it, and fit the wealth." App. to Brief for Petitioner 23a.

Echoing the same theme, counsel for respondent Tug Fork Land Company argued:

> "You have to go on what TXO thought when they were going into this well. They thought it was going to be a better well than it was. But, see, it got caught up in this litigation and now, I submit to you, they are saying that it is not as good a well as it was. And that's a fact that is in some contention here. But regardless of how good it was, when they went in and did their operation back in May, June, July and August of 1985, they had projected that this would be a 20 year well and would produce a lot of money." Tr. 748–749.

While petitioner stresses the shocking disparity between the punitive award and the compensatory award, that shock dissipates when one considers the potential loss to respondents, in terms of reduced or eliminated royalties payments, had petitioner succeeded in its illicit scheme. Thus, even if the actual value of the "potential harm" to respondents is not between $5.0 million and $8.3 million, but is closer to $4 million, or $2 million, or even $1 million, the disparity between the punitive award and the potential harm does not, in our view, "jar one's constitutional sensibilities." *Haslip*, 499 U. S., at 18.

In sum, we do not consider the dramatic disparity between the actual damages and the punitive award controlling in a case of this character. On this record, the jury may reasonably have determined that petitioner set out on a malicious and fraudulent course to win back, either in whole or in part, the lucrative stream of royalties that it had ceded to Alliance. The punitive damages award in this case is certainly large, but in light of the amount of money potentially at stake, the bad faith of petitioner, the fact that the scheme employed in this case was part

of a larger pattern of fraud, trickery and deceit, and petitioner's wealth,[28] we are not persuaded that the award was so "grossly excessive" as to be beyond the power of the State to allow.

TXO also argues that the punitive damages award is the result of a fundamentally unfair procedure because the jury was not adequately instructed, because its award was not adequately reviewed by the trial or the appellate court, and because TXO had no advance notice that the jury might be allowed to return such a large award or to rely on potential harm as a basis for its calculation. We decline to address the first argument as it was not argued or passed on below. We find the remaining arguments meritless.

The instruction to the jury on punitive damages differed from that found adequate in *Haslip*, see 499 U. S., at 6, n. 1, in two significant respects. It authorized the jury to take account of "the wealth of the perpetrator" in recognition of the fact that effective deterrence of wrongful 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."[29] It also stated that one of

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[28]TXO also contends that the admission of evidence of its alleged wrongdoing in other parts of the country, as well as the evidence of its impressive net worth, led the jury to base its award on impermissible passion and prejudice. Brief for Petitioner 22–23. Under well-settled law, however, factors such as these are typically considered in assessing punitive damages. Indeed, the Alabama factors we approved in *Haslip* included both. See *Pacific Mutual Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 21–22 (1991) ("(b) . . . the existence and frequency of similar past conduct; . . . (d) the `financial position' of the defendant").

[29]The instruction on punitive damages, to which TXO

the purposes of punitive damages is "to provide additional compensation for the conduct to which the injured parties have been subjected." See n. 29, *supra*.

We agree with TXO that the emphasis on the wealth of the wrongdoer increased the risk that the award may have been influenced by prejudice against large corporations, a risk that is of special concern when

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objected, read as follows:

"In addition to actual or compensatory damages, the law permits the jury, under certain circumstances, to 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." App. 34–35.

TXO did not propose a different instruction.

the defendant is a nonresident. We also do not understand the reference in the instruction to "additional compensation." We note, however, that in *Haslip* we referred to the "financial position" of the defendant as one factor that could be taken into account in assessing punitive damages, see n. 28, *supra*. We also note that TXO did not squarely argue in the West Virginia Supreme Court of Appeals that these aspects of the jury instruction violated the Due Process Clause, see Brief for Appellant in No. 20281 (W. Va. Sup. Ct.), p. 44–48,[30] possibly because many States permit the jury to take account of the defendant's wealth.[31] Because TXO's constitutional attack on the jury instructions was not properly presented to the highest court of the State, *Bankers Life & Casualty Co.* v. *Crenshaw*, 486 U. S. 71, 77–80 (1988), we do not pass on it.

The only basis for criticizing the trial judge's review of the punitive damages award is that he did not articulate his reasons for upholding it. He did, however, give counsel an adequate hearing on TXO's postverdict motions, and during one colloquy indicated his agreement with the jury's appraisal of

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[30]In fact, in its brief before that court, petitioner stated that "[i]t is clear under West Virginia law that the financial standing *of the defendant* is an element to be taken into consideration in determining the proper measure of punitive or exemplary damages. Brief for Appellant in No. 20281 (W. Va. Sup. Ct.), p. 37 (emphasis in original). There is no hint in that brief that petitioner thought that this state rule violated due process.

[31]See, *e.g.*, *Wagner* v. *McDaniels*, 9 Ohio St. 3d 184, 186–187, 459 N. E. 2d 561, 564 (1984); *Gamble* v. *Stevenson*, 305 S. C. 104, 111, n. 3, 406 S. E. 2d 350, 354, n. 3 (1991); *Lunsford* v. *Morris*, 746 S. W. 2d 471, 473 (Tex. 1988); *Viking Ins. Co.* v. *Jester*, 310 S. C. 317, 332, 836 S. W. 2d 371, 379 (Ark. 1992).

the egregious character of the conduct of TXO's executives. See n. 12, *supra*. While it is always helpful for trial judges to explain the basis for their rulings as thoroughly as is consistent with the efficient despatch of their duties, we certainly are not prepared to characterize the trial judge's failure to articulate the basis for his denial of the motions for judgment notwithstanding the verdict and for remittitur as a constitutional violation.

Petitioner's criticism of the West Virginia Supreme Court of Appeals' opinion is based largely on the Court's colorful reference to classes of "really mean" and "really stupid" defendants. That those terms played little, if any, part in its actual evaluation of the propriety of the damages award is evident from the reasoning in its thorough opinion, succinctly summarized in passages we have already quoted. Moreover, two members of the court who wrote separately to disassociate themselves from the "really mean" and "really stupid" terminology shared the views of the rest of the members of the court on the merits. See 187 W. Va., at 484, 419 S. E., at 895 (McHugh, C. J., concurring). The opinion was unanimous and gave careful attention to the relevant precedents, including our decision in *Haslip* and their own prior decision in *Garnes*.

Finally, we find no merit in TXO's argument that the procedure followed in this case "was unconstitutionally vague" because petitioner had no notice of the possibility that the award of punitive damages might be divorced from an award of compensatory damages. In *Wells* v. *Smith*, 171 W. Va. 97, 105, 297 S. E. 2d 872, 880 (1982), the West Virginia Supreme Court of Appeals held that a defendant could be liable for punitive damages even if the jury did not award the plaintiff *any* compensatory damages.[32] In any event, the notice

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[32]In *Garnes* v. *Fleming Landfill, Inc.,* 186 W. Va. 656,

component of the Due Process Clause is satisfied if prior law fairly indicated that a punitive damages award might be imposed in response to egregiously tortious conduct. *Haslip,* 499 U. S., at 24, n. 12. Prior law, in West Virginia and elsewhere, unquestionably did so.

The judgment of the West Virginia Supreme Court of Appeals is affirmed.

It is so ordered.

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413 S. E. 2d 897 (1991), which was decided well after the underlying conduct in this case occurred, the West Virginia Supreme Court overturned that aspect of *Wells*, holding instead that the jury must award *some* amount of compensatory damages before it can award punitive damages. See *Id.,* at 667, 413 S. E. 2d, at 908.