

# Mo Money Mo Problems: As Noneconomic Damages Awards Continue to Rise, So Do Concerns Over Their Constitutionality

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(by **Casey Alan Coyle**)

The music genre hip-hop recently celebrated its 50<sup>th</sup> anniversary. According to PBS, “no song announced hip-hop’s entrance into the mainstream louder” than the 1997 single “Mo Money Mo Problems” by Brooklyn-born Rapper Christopher Wallace, better known by his stage names “Notorious B.I.G.” and “Biggie.”

<https://www.pbs.org/wgbh/americanexperience/features/songs-of-the-summer-1997/>. Built on a sample of Diana Ross’s “I’m Coming Out,” the track featured the chorus: “I don’t know what, they want from me/ It’s like the more money we come across/ The more problems we see.” Now, nearly three decades later, that hook captures an emerging trend in the law.

The Fourteenth Amendment’s Due Process Clause “prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.” *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). While this concern precipitated the creation of a framework to assess the constitutionality of punitive damages awards over 30 years ago, no such rubric exists to determine whether compensatory damages awards comport with due process. Pennsylvania litigants are therefore left to challenge excessive compensatory damages awards under the common law. But as noneconomic damages awards continue to grow, so do concerns over their constitutionality, especially where they dwarf the economic damages, if any, awarded. This begs the question: when it comes to noneconomic damages, is it a case of mo money, mo problems?

## Compensatory v. Punitive Damages

Compensatory and punitive damages, though typically awarded at the same trial, serve distinct purposes. Compensatory damages compensate for proven injury or loss. They aim to redress the concrete loss that the plaintiff suffered because of the defendant’s conduct and include both economic harm (such as lost wages or out-of-pocket expenses) and noneconomic harm (like mental anguish, pain and suffering, and embarrassment and humiliation). Punitive damages, on the other hand, focus on deterrence and retribution. They have been characterized as “quasi-criminal” or “private fines.” *Bert Co. v. Turk*, 298 A.3d 44, 58 (Pa. 2023). “Unlike compensatory damages, which serve to allocate an existing loss between two parties, punitive damages are specifically designed to exact punishment in excess of actual harm to make clear that the defendant’s misconduct was especially reprehensible.” *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 54 (1991) (O’Connor, J., dissenting).

Compensatory damages awards are presumed valid under Pennsylvania law regardless of their size. To that end, Pennsylvania courts have often stated that large verdicts “are not necessarily excessive verdicts; each case is unique and dependent on its own special circumstances,” *Hyrcza v. W. Penn Allegheny Health Sys., Inc.*, 978 A.2d 961, 979 (Pa. Super. Ct. 2009), adding that reviewing courts are “reluctant to reverse a jury verdict that bears a reasonable resemblance to the damages proven,” *Crespo v. Hughes*, 167 A.3d 168, 189 (Pa. Super. Ct. 2017). In contrast, punitive damages awards are closely scrutinized by reviewing courts because they “pose an acute danger of arbitrary deprivation of property.” *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994). Closer examination is needed because “juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

Because of this concern and to ensure that “the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered,” in *BMW of North America, Inc. v. Gore*, the U.S. Supreme Court established a framework—commonly referred to as the “Gore guideposts”—for courts to consider when reviewing the constitutionality of a punitive damages award. 517 U.S. 559, 574–575 (1996). The guideposts are: (1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential

harm suffered by the plaintiff and the punitive damages awarded; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.* Later, in *Campbell*, the Court articulated five subfactors that applied to an examination of the first Gore guidepost.

But neither the U.S. Supreme Court nor Pennsylvania's appellate courts have established a test for evaluating the constitutionality of compensatory damages awards. For its part, the Pennsylvania Supreme Court has simply stated that a compensatory damages award "will not be upset unless it is so excessive as to shock the conscience of the court or it is clearly based on partiality, prejudice or passion." See, e.g., *Bailets v. Pa. Turnpike Comm'n*, 181 A.3d 324, 336 (Pa. 2018). But it has not articulated a corresponding standard for determining excessiveness. Amid this void, the Pennsylvania Superior Court has held that reviewing courts may consider the following non-exhaustive factors in assessing whether a verdict is excessive: (1) the severity of the injury; (2) whether the injury is manifested by objective physical evidence or solely revealed by the plaintiff's subjective testimony; (3) whether the injury is permanent; (4) whether the plaintiff can continue with their employment; (5) the size of the plaintiff's out-of-pocket expenses; and (6) the amount demanded in the plaintiff's original complaint. See, e.g., *Brown v. End Zone, Inc.*, 259 A.3d 473, 486 (Pa. Super. Ct. 2021).

## **The Noneconomic Damages Dilemma**

The test fashioned by the Superior Court may prove useful for assessing the excessiveness of a verdict consisting entirely of economic damages. But its utility is less clear in cases involving noneconomic damages, to which just three of the six factors seemingly apply (specifically, the first, second, and third). Indeed, without considering the relationship between the noneconomic damages and the economic damages awarded and comparable cases involving similar noneconomic damages awards, judicial review of a noneconomic damages award would seem illusory. And absent meaningful judicial review, nothing stops a jury from awarding punitive damages under the guise of noneconomic damages, thereby eluding constitutional review.

Two recent cases highlight this concern. In *Caranci v. Monsanto Co.*, No. 210602213 (Phila. Cnty. Ct. Com. Pl.), a husband and wife filed a products liability action against Monsanto, alleging the husband's use of Roundup caused him to develop non-Hodgkin's lymphoma. The jury found the product was defective and awarded the couple \$25 million in compensatory damages and \$150 million in punitive damages. However, because the couple withdrew their request for economic damages, the compensatory damages consisted entirely of noneconomic damages. On appeal, the Superior Court panel applied the above six-factor test and found that the verdict was not excessive. *Caranci v. Monsanto Co.*, \_\_\_ A.3d \_\_\_, 2025 WL 1340970, at \*16 (Pa. Super. Ct. May 8, 2025). In doing so, however, the Court did not address the fifth and sixth factors. The panel also did not respond to Monsanto's contention that the compensatory damages award was significantly higher than other large products-liability verdicts involving serious illnesses in Pennsylvania and compensatory damages awards against Monsanto in other jurisdictions—considerations required under the third Gore guidepost and, in any event, ones that would seem to be part and parcel of an assessment of whether a verdict shocks the conscience. And beyond summarily dismissing it as "mere conjecture and not grounds for relief," *id.*, the panel did not address Monsanto's argument that the \$25 million noneconomic damages award contained a punitive element given the couple's withdrawal of their request for economic damages and the attendant due process concerns.

More recently, in *Gill v. ExxonMobil Corp.*, No. 200501803 (Phila. Cnty. Ct. Com. Pl.), a husband and wife filed a products liability action against ExxonMobil and other defendants, alleging the husband developed acute myeloid leukemia from supposed years-long exposure to multiple products. The jury found for the couple and awarded them \$725 million in compensatory damages consisting solely of noneconomic damages. ExxonMobil filed a post-trial motion, arguing that the verdict was excessive, among other things. Notably, ExxonMobil contended that "[t]he size and nature of the compensatory damages presents constitutional issues related to Due Process and excessive fines under both the Pennsylvania and United States Constitutions, despite punitive damages not being an element of available damages to Plaintiffs. Indeed, the extraordinary damages award here cannot be understood as anything [other] than a punitive damages award in disguise." (Def. Exxon Mobil Corp.'s Br. in Supp. of Mot. for Post-Trial Relief at 52 n.34.) The trial court denied the motion. In its ensuing Rule 1925 opinion, the court acknowledged that "at trial there was no economic harm alleged, and ... only noneconomic harm was considered by the jury" (Op. at 351), which would seem to weigh in favor of a finding of excessiveness. Likewise, the court noted that the plaintiff demanded the jurisdictional threshold—\$50,000—in the original complaint (*id.*), meaning the noneconomic damages award exceeded the demand by a factor of 14,000. Nonetheless, the trial court reiterated its belief that the jury verdict was not excessive.

## **What's Next**

Monsanto filed a reargument application in *Caranci* on May 22, 2025, and merits briefing before the Superior Court will begin on June 23, 2025, in *Gill*. But regardless of the outcome of those appeals, they have brought to the fore the due process concerns posed by large verdicts involving noneconomic damages. Only time will tell if Biggie was right.

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*Casey Alan Coyle is a shareholder at Babst, Calland, Clements and Zomnir, P.C. He focuses his practice on appellate law and complex commercial litigation. Coyle is also a former law clerk to Chief Justice Emeritus Thomas G. Saylor of the Pennsylvania Supreme Court. Contact Coyle at 267-939-5832 or [ccoyle@babstcalland.com](mailto:ccoyle@babstcalland.com).*

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**Babst | Calland**  
Attorneys at Law

PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKEWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC