HOLDING: Reversed.
REASONING: To determine whether the Board's deletion of a definition for "temporary substitute automobile" changed the scope of the coverage, a court must assess the ordinary meaning of the words to the general public, and, in light of this meaning, conduct an examination of the choice the purchaser had and the choice he made. The generally accepted meaning of "temporary substitute" vehicle is that it is a vehicle used with the owner's permission, or at least a reasonable belief that the owner consented. The Board's change in the exception paragraph was intended to "avoid 'proof problems' when a family member uses a covered auto without express permission," and not to "include stolen vehicles within the meaning of 'temporary substitute.'" The coverage exclusions evidenced the unwillingness of Progressive to cover a person driving a vehicle without a reasonable belief of entitlement.
DISSENT: The purpose of the new TPAP was to clarify and remove any permission requirement for an insured's "covered auto." "If an exclusionary clause in an insurance contract is ambiguous, a court must 'adopt the construction…urged by the insured as long as that construction is not unreasonable, even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent." Because under similar circumstances, courts have held that permission is not required under the insurance contract unless the insurance policy explicitly contained such a requirement, the interpretation urged by Sink was not unreasonable.

The Board's intent may have been to exempt all "covered autos," including temporary substitute autos, from the permission requirement to avoid proof problems for liability purposes. Coverage should have applied under the circumstances presented in this case.

MISCELLANEOUS

SUPREME COURT LIMITS PUNITIVE DAMAGES

COURT APPROVES SINGLE DIGIT MULTIPLES AS LIMITATION ON PUNITIVE DAMAGES

State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003).

FACTS: While driving, Campbell passed six vans traveling ahead of him on a two-lane highway by crossing into the opposite lane of traffic. An approaching motorist swerved onto the shoulder to avoid hitting Campbell's vehicle, lost control of the car, and collided with another vehicle. One motorist was killed and the other permanently disabled; Campbell was not injured.

In the ensuing wrongful death and tort action, Campbell's insurance provider, State Farm Mutual Auto Insurance Company, declined offers to settle within the $50,000 limit of Campbell's policy ($25,000 per claimant) and contested liability. State Farm ignored the advice of one of its investigators and assured Campbell that he would not be found liable for the accident. However, the jury found Campbell to be at fault and awarded a $185,849 judgment. State Farm initially refused to pay the excess liability, but relented five years later and agreed to pay the full judgment.

After State Farm relented, Campbell filed a complaint against State Farm, alleging bad faith, fraud, and intentional infliction of emotional distress. The trial court granted summary judgment for State Farm, but the appellate court reversed. On remand, the trial court denied State Farm's motion to exclude evidence of alleged conduct in unrelated cases that occurred outside of the state. State Farm requested a bifurcated trial and the court granted their request. In the first phase of the trial, the jury concluded that State Farm's decision not to settle the wrongful death and tort actions was unreasonable because there had been a substantial likelihood of a verdict in excess of the policy limit. In the second phase of the trial, the jury awarded Campbell $2.6 million in compensatory damages and $145 million in punitive damages, which the trial court reduced to $1 million and $25 million, respectively. Both parties appealed, and the Utah Supreme Court reinstated the $145 million punitive damage award. State Farm petitioned the United States Supreme Court for certiorari, and it was granted.
HOLDING: Reversed.
REASONING: Although States do possess discretion over the imposition of punitive damages, there are procedural and substantive constitutional limitations on these awards. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001). For example, the Due Process Clause of the Fourteenth Amendment prohibits grossly excessive or arbitrary punishment of a tortfeasor. To determine what punishments are reasonable and proportionate to the wrong committed, courts must consider three guideposts: (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. *BMW of North America v. Gore*, 517 U.S. 559 (1996).

The court clarified the first guidepost, stating that reprehensibility must be determined only from conduct that actually harmed the plaintiff. Therefore, a defendant should not be punished simply for being an unsavory individual or business. Furthermore, a state cannot award punitive damages to condemn a company for national deficiencies, nor punish a defendant for conduct that may have been lawful where it occurred.

Although the court declined to establish a bright-line ratio indicating the allowable extent of disparity between punitive and compensatory damages, it noted that few awards exceeding a single-digit ratio between the two are allowable. A punitive award of more than four times the amount of compensatory damages probably lies close to the line of constitutional impropriety. *Pacific Mut. Life Ins. Co. v. Haslip*,

499 U.S. 1 (1991). Exceptions may arise if a particularly egregious act results in a small amount of economic damages, the injury is hard to detect, or the monetary value of the noneconomic harm is difficult to determine. Conversely, when compensatory damages are substantial, then a lesser ratio, roughly equal to compensatory damages, often reaches the outermost limit of the due process guarantee. *Gore*, supra, at 582. The award must be based solely on the facts and circumstances of the defendant's conduct and the harm to the plaintiff. Thus, the defendant's wealth and the rarity of punishment are not persuasive factors when considering punitive damages.

TEXAS SUPREME COURT HOLDS NO COMMON LAW DUTY TO CONDUCT DRUG TEST WITH ORDINARY CARE

Mission Petroleum Carriers, Inc. v. Solomon, 106 S.W.3d705 (Tex. 2003).

FACTS: Plaintiff Solomon was an at-will truck driver for the defendant, Mission Petroleum Carriers. Mission required its truck drivers to submit to random drug testing pursuant to Department of Transportation ("DOT") regulations. Mission conducted the testing in-house. Solomon alleged that Mission did not follow DOT regulations during the collection of his urine sample. Specifically, Solomon's immediate supervisor should not have collected the sample, the container had been removed from the kit before Solomon arrived, he was not told to wash his hands before and after the sample was provided, the collection site was not unrestricted, and the collection container was not kept in view of the collector and Solomon. Solomon, however, signed a consent form confirming the identity of the sample integrity of the process.

A Medical Re- view Officer ("MRO") subsequently notified Solomon that he had tested positive for THC Metabolite, a drug associated with marijuana. Solomon stated that the result was incorrect because he had never used marijuana and he requested a retest on the second sample. The second sample also came back positive and Mission fired Solomon. Solomon applied for employment at other trucking industries, but he was denied employment based on his positive drug test while employed by Mission. Solomon consequently sued Mission. A. A jury found that Mission's negligence proximately caused Solomon's injuries and awarded him past and future damages totaling $802,444.42 and assessed exemplary damages of $100,000 against Mission. The appellate court upheld the finding.

HOLDING: Reversed.

REASONING: Congress did not give employees a private cause of action under the DOT regulations for an employer's negligence in conducting a drug exam. Congress understood that any risk of an employee being harmed by a false positive drug test would be reduced by numerous administrative remedies available when employers do not follow DOT regulations and Solomon did not pursue any of these avenues despite being advised of these remedies when his employment began. The employee can refuse to sign the consent form for release of the results, or refuse to initial the seal on the sample bottle and refuse to sign the control and consent form. If an employee does not initial the seal or sign the Custody and Control form the MRO cannot confirm the chain of custody and he cannot verify a positive result where the sample was not obtained in accordance with DOT regulations.

Solomon could also have requested that the positive result be reported by the MRO as negative because of Mission's failure to follow protocol. He could also have initiated administrative proceedings against Mission by reporting their techniques to the Federal Highway Administration. Solomon pursued none of these avenues. Instead he signed the consent form, did not report Mission's alleged faulty collection techniques to the MRO, and filed a lawsuit. Because the risk that an employee can be harmed by a false positive is balanced by the DOT regulations, the MRO's discretion in declaring tests positive, and other administrative proceedings, a common law duty on employers who conduct in house drug testing is unnecessary.

ONE-YEAR LIMIT ON REMOVAL IS SUBJECT TO EQUITABLE EXCEPTION

Tedford v. Warner-Lambert Co., 327 F.3d 423 (5th Cir. 2003).

FACTS: Tedford sued Warner-Lambert, alleging that the drug Rezulin caused Tedford's liver failure. Tedford, a resident of Eastland County, originally filed suit in Johnson County, with Castro a resident of Johnson County and named only one nondiverse defendant, Dr. S. Johnson.

Warner-Lambert motioned to sever Tedford's claim and transfer the suit to Eastland County because Tedford had no claims against Dr. Johnson, and complete diversity existed. The motion was granted. Warner-Lambert informed Tedford of its intent to remove the case to federal court. Three hours later, Tedford amended her petition to name her physician, Dr. R. DeLuca of Eastland County, as a defendant. The district court granted Tedford's motion to remand the case to state court. Tedford signed and post-dated a Notice of Nonsuit against DeLuca, but did not notify Warner-Lambert of the nonsuit until after the one-year anniversary of the case had expired.

One year and ten days after Tedford's initial filing of the suit, Warner-Lambert again removed the case to federal court. Tedford moved to remand, claiming that the statutory limitation of 28 U.S.C. section 1446(b) barred removal more than one year after a suit had been filed. Warner-Lambert asserted that an equitable exception to section 1446(b) was appropriate and should be granted because Tedford's actions revealed a pattern of forum manipulation. The trial court denied Tedford's motion to remand and certified the issue for interlocutory appeal.

HOLDING: Affirmed.

REASONING: An evaluation of legislative history revealed that the one-year removal limitation in section 1446(b) was not intended to be absolute, but rather allowed for equitable exceptions. When enacting section 1446(b), Congress' goal was to "reduce opportunity for removal after substantial progress has been made in state court." H.R. Rep. No. 889, at 72 (1988). Congress may have intended to limit diversity jurisdiction, but it did not intend to allow plaintiffs to circumvent it altogether.

The purpose of diversity jurisdiction would be undermined if the one-year removal limit were strictly enforced, because it would encourage plaintiffs to join nondiverse defendants for a year and a day before removing them simply to avoid having the case go to federal court.

Tedford's forum manipulation justified application of an equitable exception under the doctrine of estoppel. She filed a noncognizable claim against defendant Johnson. Later she amended her complaint to add DeLuca a few hours after learning of Warner-Lambert's intent to remove. Finally, she signed and post-dated a Notice of Nonsuit against DeLuca before the expiration of the one-year period, but did not file the document with the court or notify Warner-Lambert until after the one-year anniversary of the filing of the complaint. In circumstances such as these, equity may require that the one-year limitation of section 1446(b) be extended if a court finds that the plaintiff has attempted to manipulate the rules for determining federal removal jurisdiction.

The court also noted that Warner-Lambert did not waive its right to transfer by participating in the state court proceedings before learning of the nonsuit of DeLuca. The court held a waiver must be clear and unequivocal.

CHILD'S ESTATE NOT BOUND BY ARBITRATION CLAUSE IN CONTRACT SIGNED BY PARENT

Shea v. Global Travel Marketing, Inc., ____So.2d____ (Fla. App. 4th Dist. 2003).

FACTS: Mark Shea, age eleven, was mauled by hyenas while on safari with his mother in Botswana. Mark was attacked by the animals at night while sleeping alone in a tent. Unfortunately, Mark did not survive the attack. Prior to the safari Mark's mother signed a release form on behalf of herself and her son with the operating company, The Africa Adventure Company. The release form not only released Africa Adventure from any and all liability, it bound any and all future claims arising from the safari to binding arbitration in Fort Lauderdale, Florida.

Mark's parents were divorced at the time of the incident. Mark's farther, Mark R. Shea, requesting a jury trial, alleged that he was entitled to recover under Florida's Wrongful Death Statute, as a representative of his son's estate. The trial court found that both the child and father were bound by the arbitration provision.

HELD: Reversed and remanded.

REASONING: The issue of whether a parent can bind a child to an agreement to arbitrate is one of first impression in Florida. The court recognized that it was impractical for parents to obtain a court order before entering into pre-injury contracts; however, the court could not accept the notion that parents might carte blanche waive the litigation rights of their children, absent circumstances supported by public policy. For example, waivers to obtain medical or insurance care and waivers for children to participate in common child oriented community or school activities would be circumstances in which a waiver would be supported by public policy.

Florida law has recognized that parents have the authority to contract for their children when it comes to medical care. The court stated that there was a common sense basis for such medical service or medical insurance exceptions. Concerning participation in community supported activities the court cited the reasoning of an Ohio court that stated volunteers in community recreational activities served an important function: organized recreational activities offer children the opportunity to learn valuable life skills. *Zivich v. Mentor Soccer Club, Inc.*, 696 N.E.2d 201 (Ohio 1998). Yet the threat of liability would strongly deter many individuals from volunteering for nonprofit organizations. The court concluded that such public policy concerns as exercised in the context of medical service or community recreational activities were not present in this case.

The court further concluded that it need not decide what additional circumstances might support such a waiver on public policy grounds. The court held it was sufficient to state that commercial travel opportunities were not in the category of circumstances justifying parental waiver. As the child was not bound by the binding arbitration agreement, the father's survivor claim was also not subject to binding arbitration because he was not a signatory to the contract.

ARBITRATION AGREEMENT WITH "LOSER PAYS" CLAUSE IS ENFORCEABLE

Musnick v. King Motor Co. of Fort Lauderdale, 325 F.3d 1255 (11th Cir. 2003).

FACTS: Plaintiff Musnick signed an agreement to enter into arbitration for any discrimination claims he might bring against his employer, King Motor Co. of Fort Lauderdale ("King"). The relevant portion of this arbitration agreement read,

> The prevailing party shall be awarded costs including reasonable attorneys' fees, filing fee, subpoena service and witness fee, deposition and hearing transcription costs and similar expenses, but not including expert fees unless the expert was necessary to establishing or refuting liability. In cases where a party asserts any claim, position or defense, which is not substantially justified by the law or facts, the arbitrator shall award to the opposing party that party's reasonable attorney's fees incurred as a result of that party's defending any such claim, position or defense.

In other words, the loser in any arbitration proceeding between the parties was obligated to pay the victor's legal expenses.

Musnick later sued King in district court, claiming religious discrimination in violation of Title VII of the Civil Rights Act of 1964 and Florida Statute § 760.10. King filed a motion to compel arbitration and stay the judicial proceedings. Musnick opposed the motion, arguing that the provision in the agreement awarding costs and fees to the prevailing party rendered it unenforceable and that he could not afford to pay such costs.

The district court denied King's motion to compel arbitration on the grounds that the agreement's "loser pays" provision denied Musnick a remedy he would have under Title VII if allowed to proceed under the Florida statute. King appealed.

HOLDING: Reversed and remanded.

REASONING: Under *Green Tree Financial Corp.-Alabama v.*

Randolph, 531 U.S. 79 (2000), an arbitration agreement is not unenforceable merely because it may involve some "fee-shifting." The party seeking to avoid arbitration under such an agreement has the burden of establishing that enforcement of the agreement would preclude him from effectively exercising his federal statutory rights in the arbitral forum. This burden would require the Plaintiff to show that he is likely to bear the arbitration cost and that such costs would undermine his statutory remedy. Under such circumstances, any discussion of plaintiff's potential costs necessarily is based on speculation and cannot provide an adequate basis for concluding that his or her costs would be prohibitively expensive.

The question here, is whether Musnick met the burden of demonstrating that, if compelled to arbitrate his claim, he would face such high costs that he was effectively barred from vindicating his Title VII rights in the arbitral forum. The sole evidence he presented was an affidavit in which he said he feared a potential attorney's fee award against him, and that he would not be able to afford such fees. Musnick was obligated under *Green Tree* to present evidence, rather than speculation, as to the financial hardship he would face. Accordingly, Musnick did not meet this burden and is compelled to arbitrate because the "loser pays" provision of the Agreement would not result in prohibitive costs that would force him to relinquish his statutory rights under Title VII.

DAMAGE PROVISION IN RENTAL CAR CONTRACT AMBIGUOUS REGARDING RENTER'S LIABILITY FOR STOLEN VEHICLE

Barrios v. Enter. Leasing Co., 110 S.W.3d 185 (Tex. App.—Houston [1st Dist.] 2003).

FACTS: Horacio Barrios rented a car from Enterprise Leasing Company of Houston. During the rental term, the car was stolen. Both parties acknowledge that the automobile was stolen while in Barrios' possession, but there was neither pleading nor proof that the loss was due to Barrios' misconduct or lack of diligence. After Barrios refused to reimburse or otherwise compensate Enterprise for the theft of the car, Enterprise sued Barrios for breach of rental contract. Enterprise filed a motion for summary judgment on the issue of liability, with the rental contract attached to its motion. The trial court granted partial summary judgment for Enterprise.

HOLDING: Reversed.

REASONING: The court reasoned that summary judgment is improper in cases when there exists an ambiguous term because that ambiguity gives rise to a question of fact. Whether a contract is ambiguous is a question of law for the court to decide by looking at the contract as a whole in light of the circumstances present when the contract was entered. *Coker v. Coker*, 650 S.W.2d 391, 393-94 (Tex. 1983).

The rental contract did not establish as a matter of law that Barrios promised to pay Enterprise the retail value of the rental car in the event it was stolen without fault or negligence on his part. The provision relied on by Enterprise to establish Barrios' liability raised questions of ambiguity. The title of the provision was "Damage to Rented Car," not "Loss of Rented Car;" and all references in the provision are to loss or damage to the rental car. Nowhere did the "Damage to Rented Car" provision (or any other provision in the contract) expressly state that the renter promised to pay the retail replacement value of the car itself if it was stolen. Nothing within the four corners of the contract conveys to the renter his obligation to reimburse Enterprise for the value of a stolen car. Thetefore, the court held that the "Damage to Rented Car" provision in the rental contract was ambiguous as to whether it expresses a promise by the renter to pay Enterprise the retail value of a rented vehicle that was stolen through no fault or negligence of his own. Further, the assumption that a renter would understand he was undertaking the responsibility of replacing a car if it was stolen is not one that reasonably should be imputed to most consumers. Consumers cannot be expected to interpret contract terms in a sophisticated manner during the rental process.

COURSE OF CONDUCT IN COMMERCIAL CONTRACT DISPUTE WAS NOT SEVERE ENOUGH TO CONSTITUTE EXTREME AND OUTRAGEOUS CONDUCT

Tiller v. McLure, ____ S.W.3d ____ (Tex. 2003).

FACTS: Plaintiff, Barbara McLure and her husband, Bill McLure, entered into two contracts with defendant. After Bill McLure was diagnosed with a brain tumor, he began relinquishing duties, and by mid-February 1998, Barbara McLure and her son had assumed full responsibility for the project. Tiller was notified in a letter of the change in responsibilities, which included an invitation to contact her or her son with questions. Barbara McLure planned to close the construction site on the day of Bill McLure's funeral. Upon hearing of this planned closure, Tiller threatened to terminate the contracts. From the time the letter was sent until construction ceased, Tiller repeatedly expressed dissatisfaction in numerous telephone calls to Barbara McLure at her home and during non-business hours. The telephone calls required Barbara to make approximately 25 unnecessary trips to the construction site. After being slow to pay, Tiller refused to pay the remaining balance, and as a direct result of this failure to pay the remaining balance on the contracts, Barbara McLure was forced to liquidate the company. Tiller's course of conduct left Barbara McLure nervous and upset, causing her stomach problems, weight loss and insomnia. Barbara McLure sued Tiller for intentional infliction of emotional distress.

The jury found on behalf of Barbara McLure for $500,000 in actual damages and $1.5 million in punitive damages, but the trial court granted Tiller's motion for judgment notwithstanding the verdict. The court of appeals reversed, concluding that there was some evidence of extreme and outrageous conduct.

HOLDING: Reversed.

REASONING: To establish a *prima facie* case for intentional infliction of emotional distress the plaintiff must prove that: (1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe. Tiller's most egregious conduct was his threat to terminate the contracts

because of the lapse in work on the day of Bill McLure's funeral; however, this conduct does not rise to the level of extreme and outrageous conduct.

Course of action should be evaluated as a whole to determine whether it was extreme and outrageous. *GTE Southwest v. Bruce*, 998 S.W.2d 605, 616 (Tex. 1999). Tiller's actions were regularly insensitive, unreasonable and otherwise wrongful. However, even when viewed in its totality, Tiller's course of conduct in this commercial contract dispute was not severe enough to constitute extreme and outrageous conduct. While Tiller's calls were numerous and unpleasant, they were focused on criticism of the project and he never directly attacked Barbara McLure. Tiller is not, therefore, liable for any distress caused to Barbara McLure because his conduct was not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Restatement (Second) of Torts § 46 cmt. d (1965).

CLASS ACTION AND $145 BILLION AWARD AGAINST CIGARETTE COMPANIES OVERTURNED

Liggett Group, Inc. v. Engle, ____ So. 2d ____ (Fla. Dist. Ct. App. 2003).

FACTS: Plaintiff Engle and others, a class of smokers and their survivors, sued Defendant Liggett Group, Inc., a tobacco industry organization and major domestic cigarette company. The plaintiffs alleged they were not able to stop smoking as a result of their addiction to nicotine and as a result, they developed medical problems ranging from cancer and heart disease to colds and sore throats. Plaintiffs sought damages on theories of strict liability, negligence, breach of express warranty, breach of implied warranty, fraud, conspiracy to commit fraud, and intentional infliction of emotional distress.

In 1996, the court reduced the class of smokers, originally certified in October 1994 as a nationwide class, to include Florida smokers only. In 1998, the trial court issued its trial plan, which divided the trial proceedings into three phases. Phase 1 consisted of a trial on liability and entitlement to punitive damages. At the conclusion of Phase 1, the jury found that smoking caused some of the diseases at issue and that cigarettes containing nicotine were addictive. The jury answered certain general questions that related to some of the elements of each legal theory alleged. The jury also found that the Defendants engaged in unspecified conduct that rose to a level that would permit a potential award or entitlement to damages. In Phase 2, the jury determined that the three class representatives established liability and were entitled to compensatory damages with respect to their individual claims. The jury then awarded the entire class a lump sum of $145 billion in punitive damages without allocation of that amount to any class member. New juries would decide the individual liabilities and compensatory damages for each class member in Phase 3, which had not yet begun.

The defendants filed post-verdict motions for remittitur and class decertification. The trial court entered an Omnibus Order on all pending motions instead of holding hearings. The order, which denied most of the motions by the defendants, granted judgment in favor of plaintiffs and ordered the defendants to pay the $145 billion to the court registry for the benefit of the class. The defendants appealed.

HOLDING: Reversed and remanded.

REASONING: Florida Rule of Civil Procedure 1.220(a) requires that common issues of law predominate over the different individual issues at the core of each class member's claim to allow a class to be certified. Fla. R. Civ. P. 1.220 (2003). This predominance or commonality requirement is not satisfied when the claims involve factual determinations unique to each plaintiff. Rule 1.220 also requires that class representation be superior to other available methods of fairly and efficiently adjudicating the claims presented.

The court noted that when significant individual issues exist in a class action lawsuit, the lawsuit is unmanageable and a waste of judicial resources, and it is unjust to bind absent class members to a negative decision where the class representative's claims present different individual issues than those of the absent members. In such circumstances, class representation was not superior to individual suits for the fair and efficient adjudication of the controversy. Fla. R. Civ. P. 1.220(b)(3) (2003). Because each class member in the instant case had unique and different experiences that would require the litigation of substantially different issues, class representation was not superior to individual suits. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001). Class decertification was required because each of the 700,000 class members would be required to present extensive proof regarding individualized issues of liability, affirmative defenses, damages, and choice of law.

Florida law also requires that a defendant be found liable before any punishment is imposed. Where actual damages are an element of the underlying cause of action, an award of compensatory damages is a prerequisite to an award of punitive damages. *Ault v. Lohr*, 538 So.2d 454, 457 (Fla. 1989) (Ehrlich, C.J. concurring). Without this prior assessment, it is impossible to determine whether punitive damages bear a reasonable relationship to the actual harm inflicted on the plaintiff as required by Florida and federal law. Fla. Stat. § 768.75(5)(d) (1997). The trial plan in this case required the defendants to pay punitive damages for supposed injuries to thousands of class members without the necessary prerequisite findings of liability and compensatory damages. Because the jury did not determine whether defendants were liable and could not determine fair compensation, the trial court erred in awarding class wide punitive damages.

Furthermore, Defendants were entitled to a jury determination on an individualized basis as to whether, and to what extent, each particular class member was entitled to receive punitive damages. In addition, under state and federal law, punitive damages may not have been assessed in an amount which would financially ruin the defendant. Although punitive damages should be enough to deter and grant retribution, the $145 billion verdict far exceeded the Defendants' $8.3 billion net worth. Accordingly, the class wide punitive damages award was reversed.