No. D045154

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

BENETTA BUELL-WILSON and BARRY S. WILSON,

Plaintiffs, Respondents, and Cross-Appellants,

v.

FORD MOTOR COMPANY and DREW FORD,

Defendants, Appellants, and Cross-Respondents.

On Appeal From The San Diego County Superior Court
The Honorable Kevin A. Enright
No. GIC800836

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANTS

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January 3, 2006

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to California Rule of Court 29.1, subdivision (f), the Chamber of Commerce of the United States of America respectfully applies for leave to file the attached *amicus curiae* brief in support of appellants in this case.

The Chamber is the world's largest business federation. With a substantial membership in California and the other forty-nine States, the Chamber represents an underlying membership of more than three million businesses and organizations of every size, in every sector of business, and in every region of the country. The Chamber thus serves as the principal voice of the American business community, and regularly advocates the interests of its members in court on issues of national concern.

The Chamber has a significant interest in the issues presented in this appeal, including the imposition of $75 million in punitive damages based on Ford's manufacture of a motor vehicle (the popular Explorer 4x4) that complied with all relevant government and industry safety standards. Over the past 15 years, the Chamber has filed a brief in every punitive damages case before the U.S. Supreme Court and in many cases before the

California courts. Accordingly, the Chamber respectfully applies for leave to file this brief to highlight its concern over the punitive damages award in this case, and to urge this Court to reverse that award.

Respectfully submitted,

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INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents the question whether California juries may impose not only *liability* but also *punitive damages* upon the maker of a motor vehicle that complied with all relevant government and industry safety standards. The answer to that question, as a matter of both law and common sense, is no. Punitive damages are by definition extra-compensatory (*i.e.*, "punitive"), which is why they are disfavored by California law, and are available only in extreme and egregious circumstances. Where, as here, a product manufacturer complies with all relevant government and industry safety standards, the extraordinary circumstances necessary for an award of punitive damages simply are not present as a matter of law. That straightforward point should be the beginning and the end of the punitive damages issue in this case.

The court below, however, simply kicked the punitive damages issue to the jury, which proceeded to award *$246 million* in punitive damages against Ford. Although the trial court later reduced that amount to $75 million, that remittitur only highlights, and does not cure, the fundamental arbitrariness of the jury's award. The point here is not merely that the jury

awarded *excessive* punitive damages, but that the jury should not have been allowed to award *any* punitive damages at all. Limiting the *amount* of punitive damages is no substitute for limiting the *availability* of punitive damages. Because the trial court here failed to exercise its power and duty as the "gatekeeper" over punitive damages, and this case does not remotely present the extraordinary circumstances where such damages may be warranted as a matter of law, this Court at the very least should reverse the award of punitive damages.[1]

ARGUMENT

The Trial Court Erred By Allowing The Jury To Award Punitive Damages Where, As Here, Ford Complied With All Relevant Government And Industry Safety Standards.

The trial court below ordered Ford to pay plaintiffs *$75 million* in punitive damages (on top of another *$75 million* in compensatory damages) even though the record is undisputed that the 1997 Explorer 4x4 at issue in this case complied with all

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[1] The Chamber agrees with appellants that the judgment should be reversed for the other reasons set forth in appellants' opening brief, but will limit this *amicus* brief to the propriety of awarding punitive damages in this case based on conduct that complies with all relevant government and industry safety standards.

relevant government and industry safety standards. This Court should not allow that startling result. Our legal system may not always produce perfect justice, but this Court should not allow it to become an engine for manifest injustice and naked redistribution of wealth.

As a threshold matter, it is important to keep in mind that punitive damages are by definition *extra*-compensatory: they seek not to compensate the plaintiff but to punish and/or deter the defendant. *See, e.g., Adams v. Murakami* (1991) 54 Cal. 3d 105, 110; W. Page Keeton *et al., Prosser & Keeton on the Law of Torts* § 2, at 9 (5th ed. 1984). For this reason, they represent an "exception" to the general rule that "[t]he civil law is normally concerned with compensating victims for actual injuries sustained at the hands of a tortfeasor," *College Hosp. Inc. v. Superior Ct.* (1994) 8 Cal. 4th 704, 712, and thus are "not favor[ed]" in the law, *Dyna-Med, Inc. v. Fair Employment & Hous. Comm'n* (1987) 43 Cal. 3d 1379, 1392 (internal quotation omitted); *see also College Hosp.*, 8 Cal. 4th at 712 ("[P]unitive damages are a windfall form of recovery.") (internal quotation omitted); *Davis v. Hearst* (1911) 160 Cal. 143, 162 ("[T]he sole

object of an action at law is to return full compensation in terms of money for a legal wrong inflicted upon a plaintiff.").

In California, the parameters of that "exception" are set forth by statute: to recover punitive damages, a plaintiff must prove by "clear and convincing" evidence—the highest standard of proof in the civil law—that the defendant's conduct involved "oppression, fraud, or malice." Cal. Civ. Code § 3294(a). That statute, as the Supreme Court has emphasized, "strictly define[s]" the punishable acts that fall into these categories: "[e]ach involves 'intentional,' 'willful,' or 'conscious' wrongdoing of a 'despicable' or 'injurious' nature." *College Hosp.*, 8 Cal. 4th at 721 (quoting Cal. Civil Code § 3294(c); brackets omitted). The California Legislature imposed these stringent procedural and substantive limitations on punitive damages in the Civil Liability Reform Act of 1987 precisely to rein in the availability of punitive damages in this State. *See, e.g., College Hosp.*, 8 Cal. 4th at 712; *Shade Foods, Inc. v. Innovative Prods. Sales & Mktg., Inc.* (2000) 78 Cal. App. 4th 847, 890-91; *Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal. App. 4th 1269, 1287.

Needless to say, these limitations would be quite meaningless if trial courts could allow juries to award punitive

damages as a matter of course in every tort case. As a matter of law, punitive damages are not warranted where no reasonable jury could determine by clear and convincing evidence that the defendant's conduct was sufficiently culpable to meet the demanding standard of culpability set forth in § 3294. *See, e.g.*, *College Hosp.*, 8 Cal. 4th at 725-27; *Shade Foods*, 78 Cal. App. 4th at 910; *Tomaselli*, 25 Cal. App. 4th at 1286; *cf. Trabing v. California Navigation & Improvement Co.* (1898) 121 Cal. 137, 143; *Beck v. State Farm Mut. Auto. Ins. Co.* (1976) 54 Cal. App. 3d 347, 355; *Ebaugh v. Rabkin* (1972) 22 Cal. App. 3d 891, 894-95; *Fick v. Nilson* (1950) 98 Cal. App. 2d 683, 686; *Treesh v. Stone* (1921) 51 Cal. App. 708, 712. The statute is not hortatory; it provides the *sole* basis for an award of punitive damages under California law.

In light of this basic principle, this is an easy case: conduct that is comprehensively regulated by the Federal Government, and complies with all relevant government and industry safety standards, cannot warrant punitive damages as a matter of law. That is not to say, of course, that a defendant cannot be held *liable* for such conduct, and forced to pay all damages necessary to *compensate* the plaintiff. Rather, that is only to say that the

"windfall" recovery of punitive damages, *College Hosp.*, 8 Cal. 4th at 712, is not appropriate under California law where the defendant has complied with all relevant government and industry safety standards. Even assuming that the defendant's conduct under such standards was wrongful so as to warrant tort liability in the first place, *but see Ramirez v. Plough, Inc.* (1993) 6 Cal. 4th 539, 548, 553, it simply cannot be said to be clearly and convincingly "despicable" and/or "vile," Cal. Civil Code § 3294, if those terms are to have any meaning whatsoever, and if California courts are to exercise "the greatest caution" in allowing such damages, *Dyna-Med*, 43 Cal. 3d at 1392 (internal quotation omitted), in deed as well as in word.[2]

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[2] Courts in other States, as well as prominent commentators, have also recognized the common-sense point that compliance with relevant government and industry safety standards cannot be characterized as the sort of egregious conduct that can warrant punitive liability. *See, e.g., Stone Man, Inc. v. Green* (Ga. 1993) 435 S.E.2d 205, 206 ("[P]unitive damages ... are, as a general rule, improper where a defendant has adhered to environmental and safety regulations."); *see also Miles v. Ford Motor Co.* (Tex. Ct. App. 1996) 922 S.W.2d 572, 589-90 & n.7, *aff'd in part, rev'd in part on other grounds*, (Tex. 1998) 967 S.W.2d 377; *American Cyanamid Co. v. Roy* (Fla. 1986) 498 So. 2d 859, 862-63; *Satcher v. Honda Motor Co.* (5th Cir. 1995) 52 F.3d 1311, 1316-17 (applying Mississippi law); *Richards v. Michelin Tire Corp.* (11th Cir. 1994) 21 F.3d

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Plaintiffs thereby err by asserting that "[u]nder California law, compliance with safety regulations is no defense to punitive damages." Pls.' Br. 47-48. Their sole citation for that assertion is a case that *predates* the Civil Liability Reform Act of 1987: *Grimshaw v. Ford Motor Co.* (1981) 119 Cal. App. 3d 757. Putting aside the fact that the issue in *Grimshaw* was whether punitive damages could be awarded in strict liability cases (not the effect of regulatory compliance), *see id.* at 810, and regardless of whether that decision was correct as an original matter, *but see* David G. Owen, *Problems In Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 21 (1982) (criticizing *Grimshaw*), the whole point of the 1987 statute

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1048, 1058 n.20 (applying Alabama law); *Drabik v. Stanley-Bostitch, Inc.* (8th Cir. 1993) 997 F.2d 496, 510 (applying Missouri law); *Alley v. Gubser Dev. Co.* (10th Cir. 1986) 785 F.2d 849, 856 (applying Colorado law); *Boyette v. L.W. Looney & Son, Inc.* (D. Utah 1996) 932 F. Supp. 1344, 1347-48 (applying Utah law); *Sloman v. Tambrands, Inc.* (D. Md. 1993) 841 F. Supp. 699, 703 n.8 (applying Maryland law); *Prosser & Keeton on The Law of Torts* § 36, at 233 n.41 (compliance with a safety standard should presumptively bar punitive damages); Paul Dueffert, Note, *The Role of Regulatory Compliance in Tort Actions*, 26 Harv. J. Legis. 175, 200 (1989) (same); David G. Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 41-42 & n.196 (1982) (same).

was to *limit* the circumstances under which punitive damages may be awarded in this State. *See, e.g., College Hosp.*, 8 Cal. 4th at 712; *Shade Foods*, 78 Cal. App. 4th at 890-91; *Tomaselli*, 25 Cal. App. 4th at 1287. Prior to 1987, the statutory standard for awarding punitive damages had been less stringent, which is why the statute was amended in the first place. Needless to say, a pre-1987 case sheds no light on the dispositive issue here: whether a trial court applying the 1987 statute may allow a jury to award punitive damages based on conduct that complied with all relevant government and industry safety standards. As noted above, the answer to that question, as a matter of both law and common sense, is no.[3]

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[3] Plaintiffs drop a footnote citing four cases for the unremarkable proposition that compliance with government and industry safety standards "does not insulate [a] manufacturer from tort *liability*." Pls.' Br. 48 n.39 (emphasis added; citing *Hasson v. Ford Motor Co.* (1982) 32 Cal. 3d 388, 407; *Perry v. Mercedes Benz of N. Am.* (5th Cir. 1992) 957 F.2d 1257, 1266; *Sours v. General Motors* (6th Cir. 1983) 717 F.2d 1511, 1516-17; *Dawson v. Chrysler* (3d Cir. 1980) 630 F.2d 950, 958). As noted in the text, however, the issue here is not whether compliance with government and industry standards insulates a manufacturer from *liability*, but rather from *punitive damages*. For similar reasons, the trial court's reliance on *Buccery v. General Motors Corp.* (1976) 60 Cal. App. 3d 533, 540-41, *see* AA2049, is misplaced: that case

(Continued...)

Indeed, were that not the case, and were juries free to impose punitive damages based on conduct that complied with all relevant government and industry safety standards, then the imposition of such damages would truly be arbitrary and capricious, and serious constitutional questions presented. If the Civil Liability Reform Act of 1987 means anything at all, it means that punitive damages cannot be awarded under these circumstances. To recognize that straightforward point is not to invade "the province of the jury," Pls.' Br. 50, but instead to protect the traditional province of the courts in serving as "gatekeepers" over punitive damages. *See, e.g., College Hosp.*, 8 Cal. 4th at 725-27; *Silberg v. California Life Ins. Co.* (1974) 11 Cal. 3d 452, 463; *Davis*, 160 Cal. at 161-62; *Trabing*, 121 Cal. at 143; *Taylor v. Hearst* (1895) 107 Cal. 262, 271; *Shade Foods,* 78 Cal. App. 4th at 910; *Tomaselli,* 25 Cal. App. 4th at 1288; *Barry v. Raskov* (1991) 232 Cal. App. 3d 447, 457-58; *Beck*, 54 Cal. App. 3d at 355; *Ebaugh*, 22 Cal. App. 3d at 894-95; *McDonell v. American Trust Co.* (1955) 130 Cal. App. 2d 296, 301; *Fick*, 98

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held only that compliance with federal safety standards does not preclude common law *liability*.

Cal. App. 2d at 686; *Treesh*, 51 Cal. App. at 712; *Morgan Guar. Trust Co. v. American Sav. & Loan Ass'n* (9th Cir. 1986) 804 F.2d 1487, 1500 (applying California law).

The key point here, then, is that the Federal Government comprehensively regulates the manufacture of motor vehicles in this Nation. In particular, the National Highway Traffic Safety Administration ("NHTSA"), an agency within the Department of Transportation, is responsible for implementing Congress' directive that "[t]he Secretary of Transportation shall prescribe motor vehicle safety standards" that "shall ... meet the need for motor vehicle safety." 49 U.S.C. § 30111. Pursuant to that statutory directive, NHTSA has promulgated Federal Motor Vehicle Safety Standards to address all pertinent safety concerns.

It is undisputed that the 1997 Explorer 4x4 at issue in this case complied with all of the relevant federal safety standards. That should settle the matter: under these circumstances, punitive damages are not warranted as a matter of law. *See, e.g., Brand v. Mazda Motor Corp.* (D. Kan. 1997) 978 F. Supp. 1382, 1394-95; *Welch v. General Motors Corp.* (N.D. Ga. 1996) 949 F. Supp. 843, 844-46; *Chrysler Corp. v. Wolmer* (Fla. 1986) 499 So. 2d 823, 826; *Miles*, 922 S.W.2d at 589-90 & n.7; *see also*

Owen, *Problems*, 49 U. Chi. L. Rev. at 42 n.196. Plaintiffs nonetheless allege that the vehicle was insufficiently stable, and thus prone to rollover, and that its roof was insufficiently strong, and thus prone to allow injuries in the event of a rollover. Pls.' Br. 13-14. It is critical to note that plaintiffs' theory of defect necessarily encompasses *both* these allegations—an insufficiently stable vehicle *per se* would not be defective, if the vehicle were otherwise strong enough to prevent injuries. The question, after all, is whether the vehicle *as a whole* was defective, and plaintiffs cannot establish a "defect" in one component in isolation from the rest of the vehicle. *See, e.g.*, *Daly v. General Motors Corp.* (1978) 20 Cal. 3d 725, 746; *Quacchia v. DaimlerChrysler Corp.* (2004) 122 Cal. App. 4th 1442, 1452. The problem for plaintiffs is that, at all relevant times here, NHTSA had considered, and expressly rejected, the very allegations of "defect" now advanced by plaintiffs.

With respect to roof strength, the 1997 Explorer's roof met or exceeded NHTSA's relevant safety standard, Federal Motor

Vehicle Safety Standard ("FMVSS") 216. *See, e.g.*, AA2618-56.[4] The trial court did not dispute that fact; rather, the trial court asserted that "the FMVSS is a *minimum* standard and does not preclude a finding of product defect." AA2050 (emphasis added). In support of that assertion, the trial court cited the "saving clause" of the federal statute, which provides:

> Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from *liability* at common law.

49 U.S.C. § 30103(e) (emphasis added). According to the trial court, the key point here is that federal law "does not preclude a finding of product defect" under state law. AA2050.

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[4] Plaintiffs try to minimize the impact of Ford's compliance with FMVSS 216 by arguing that this standard "was actually shown to be less stringent than Ford's own engineers had concluded should be required." Pls.' Br. 49. That argument misses the point. The point here is not the *adequacy* of the federal standard; rather, the point here is that compliance with the federal standard necessary negates a clear and convincing showing of the "despicable" and "vile" conduct necessary to warrant punitive damages. For similar reasons, plaintiffs' allegation that "Ford only 'passed' the FMVSS 216 test by improperly supporting *both* the sills and frame of the vehicle in violation of the regulation," Pls.' Br. 50 (emphasis in original), also misses the point. As the U.S. Supreme Court has explained, a state-law tort action is not the proper forum to pursue a theory of fraud on a federal agency. *See Buckman Co. v. Plaintiffs' Legal Comm.* (2001) 531 U.S. 341, 348.

But the issue here, of course, is not whether federal law preempts a state from imposing *liability* for conduct that complies with federal safety standards, but whether a state itself may decline to impose *punitive damages* for such conduct. This is not a matter of federal preemption; rather, this is a matter about the meaning of a California statute, Cal. Civil Code § 3294. As a matter of California law, conduct that complies with all relevant government and industry safety standards simply cannot be deemed so "despicable" or "vile" as to warrant the imposition of punitive damages. Cal. Civil Code § 3294. The trial court thus missed the point completely by rejecting Ford's challenge to the imposition of punitive damages by simply insisting that federal law did not preempt state law on liability.

With respect to vehicle stability, NHTSA carefully studied the issue for three decades and made a conscious decision not even to *impose* a federal safety standard, on the ground that any such standard would compromise the safety of the vehicle in other ways, as well as require design modification that potentially could deny the public the practical benefits consumers derive from SUVs as a class. AA605, 608 (52 Fed. Reg. 49033, 49036 (Dec. 29, 1987) (denying petition to set minimum stability

index based, in part, on statistical analysis showing imprecise correlation between stability index and rollover propensity as demonstrated by actual accident data); AA648-659 (61 Fed. Reg. 28550, 28553 (June 5, 1996) (rejecting standards that would force an increase in track width or a lowering of center of gravity height, because "even minor changes in those parameters may come at the cost of adversely affecting other attributes desired by consumers")). As NHTSA explained, a stability standard would not provide "a valid predictor of overall risk of rollover" because it would "not take into consideration such chassis and suspension variables as wheelbase, kinematic and compliance characteristics of suspensions, and spring and shock absorber characteristics." AA605, 607 (52 Fed. Reg. 49033, 40935 (Dec. 29, 1987)). Indeed, plaintiffs' own stability expert conceded below that the stability standard proposed by plaintiffs would *not* have accurately predicted rollover risk, because too many other factors are involved. RT3721. By lowering and widening the vehicle to reduce the risk of rollover (as plaintiffs propose), Ford actually would have made the 1997 Explorer *less* safe in any other kind of accident. *See* RT49. In other words, because sport utility vehicles ("SUVs") are higher off the ground than other

automobiles they fare better in side and frontal impact crashes but the risk of rollover is greater. That does not mean that SUVs are *per se* defective. To the contrary, rather than imposing a rollover safety standard, NHTSA since 1984 instead has required manufacturers to warn consumers about the risk of rollover. *See* AA528-35 (49 Fed. Reg. 20016 (May 11, 1984)).[5] It is undisputed that the 1997 Explorer 4x4 at issue here posted the requisite warning. *See* RT1723-36.

The trial court below thus missed the point by asserting that "with regard to the issue of stability, there is *no* applicable federal standard in place which would preempt Plaintiffs' state tort claims." AA2050 (emphasis added); *see also id.* ("[T]he non-existence of the safety standard cannot preclude state tort claims."). Once again, the issue is not federal preemption, but

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[5] In 2001, NHTSA began publishing comparative consumer information on rollover resistance based on the Static Stability Factor ("SSF") of a vehicle. Based on concerns that the SSF test did not include important performance factors, NHTSA, beginning with the 2004 model year, now combines SSF with a vehicle's "Fishhook" maneuver performance to arrive at a combined rollover rating. *See Consumer Information; New Car Assessment Program; Rollover Resistance*, 68 Fed. Reg. 59250, 59250 (Oct. 14, 2003) (to be codified at 49 C.F.R. pt. 575).

whether *state* law allows the imposition of punitive damages where a manufacturer has complied with all pertinent federal requirements. NHTSA's decision to impose a warning requirement, rather than a safety standard, with respect to rollovers represents a clear policy choice: contrary to the trial court's suggestion, this is not a situation involving a federal regulatory void. Under these circumstances, the Federal Government's decision *not* to impose a safety standard is as relevant as the Federal Government's decision to adopt a particular standard. Where, as here, a government agency has specifically declined to adopt a specific safety standard, and instead opted for a warning, a defendant's compliance with the federal warning is sufficient to negate the culpability necessary to justify punitive damages. *See e.g., Satcher*, 52 F.3d at 1317 (reversing punitive damages because the standard proposed by plaintiffs was not required by government regulation or industry standard); *cf. Ramirez*, 6 Cal. 4th at 651-53 (holding that where a federal agency concludes that a warning is sufficient, compliance with that warning precludes even liability). As long as the requisite warning was posted, which it indisputably was here, Ford complied with federal law on the issue of vehicle rollovers,

and under no circumstances can such compliance be deemed "despicable" or "vile" conduct. Cal. Civil Code § 3294.

At bottom, plaintiffs' quest for punitive damages is a collateral attack on NHTSA's decision *not* to adopt a rollover standard instead of a warning requirement. Plaintiffs are obviously free to mount that attack in the proper forum, but they are not free to force Ford to pay $75 million in punitive damages based on conduct that complies with all relevant requirements. *See, e.g., Buckman*, 531 U.S. at 348.

Indeed, the record here reveals that Ford's 1997 Explorer 4x4 compared favorably to, and in many cases exceeded, industry standards, customs, and practices for vehicle stability. According to plaintiffs, Ford should have lowered and widened the vehicle to minimize rollover risk, *see* Pls.' Br. 8, but the Explorer's track-width to center-of-gravity ratio (SSF factor) is comparable to and even better than many standard SUV models.[6] Moreover, according to plaintiffs' own expert, a vehicle needs to pass four

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[6] According to NHTSA, the 1997 Ford Explorer scored better than or equal to 4 classes of SUVs for Static Stability Factor. *See* 68 Fed. Reg. at 59255 tbl. 1.

stability tests utilized in the industry to be deemed safe: the J-turn test, the Consumer Union short course test—which according to plaintiffs themselves, is the most important stability test for accident avoidance maneuvers like the one at issue here, RT3232—the "fish hook" test, and NHTSA's road edge recovery test. RT3612-13. And, as that same expert was forced to concede, NHTSA put the *least* stable Explorer through those tests—and it passed each one. RT3635-36.[7] As a matter of law, Ford's compliance with these industry standards and customs negates the extreme culpability necessary to warrant punitive

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[7] Plaintiffs do not deny that their expert "admitted that the least stable Explorer model had passed J-turn, Consumer Union Short course, and 'fish hook' road recovery tests administered by NHTSA." Pls.' Br. 49 n.40. Rather, they characterize this inconvenient fact as "misleading," on the ground that "NTHSA ran these tests to evaluate the vehicle's handling, not stability." *Id.* But that assertion does not pass the straight-face test: the tests passed by the least stable Explorer were the *very tests* identified by plaintiffs' expert as particularly relevant to stability. *See* RT3612:1-3613:14. Moreover, a NHTSA study found that the 1997 Ford Explorer model performed the same as or better than ten of thirteen types of SUVs in a series of four driving maneuver tests. *See* 68 Fed. Reg. at 59255 tbl.1.

damages. *See e.g., Drabik*, 997 F.2d at 510; *Satcher*, 52 F.3d at 1316-17.[8]

In short, NHTSA, the federal agency in charge of motor vehicle safety, concluded (based on its expertise and experience) that stability warnings and FMVSS 216 roof strength regulations were adequate public safety measures to address the very "defects" alleged by plaintiffs in this case. Whether that conclusion turned out to be right or wrong, surely it means that a California jury cannot characterize Ford's undisputed compliance with these government and industry safety standards as

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[8] As appellants' opening brief explains, the jury in this case was precluded even from *hearing* about these industry customs and practices. For example, plaintiffs alleged that the Explorer was not "measuring up" to the Blazer, *see* RT1278-79, but the Explorer and Blazer roll-over rates are essentially identical, which the jury never heard. AA26-27, 278-82. Indeed, the fact that the Explorer "had one of the best rollover rates compared to other SUVs in its class" was stricken from the record, RT3300-01, and Ford was not allowed to testify as to whether the Explorer had a higher rollover rate than other SUVs, RT5109-10. *But see Lane v. Amsted Indus., Inc.* (Mo. Ct. App. 1989) 779 S.W.2d 754, 759 (holding that where punitive damages places the knowledge and culpability of the defendant at issue, evidence of industry custom and practice, although otherwise inadmissible to prove a defect "addresses a material issue in litigation and so is admissible").

"despicable" or "vile" conduct warranting punitive damages. Cal. Civil Code § 3294.

Indeed, allowing a defendant to be punished for conduct that complies with all relevant government and industry safety standards would effectively leave the financial future of the motor vehicle industry (and American business in general) at the whim of individual juries. That result is intolerable as a matter of both law and policy. *See Liesener v. Weslo, Inc.* (D. Md. 1991) 775 F. Supp. 857, 861-62 ("It would be intolerable to hold that a manufacturer must, to escape punitive damages, follow the path of timidity and greatest caution ... shaped by the most pro-plaintiff result possible, especially where the manufacturer's conduct conforms to widely-recognized industry standards."). There is, after all, no such thing as a risk-free motor vehicle. *See, e.g., Stone Man, Inc.*, 435 S.E.2d at 206; *see also* Owen, *Problems*, 49 U. Chi. L. Rev. at 16 ("[M]anufacturers of hazardous products such as automobiles must design them in many different ways they know with virtual certainty will result in harm or death at

some time ... yet surely punishment is inappropriate for simply being in the business of making high speed machines.").[9]

At the end of the day, when a manufacturer relies "in good faith on the current state of the art in safety concerns, and on conclusions by the government agencies charged with administering safety regulations in the area of its product that the product is not unreasonably dangerous, it cannot be said to have acted with an entire want of care showing conscious indifference to the safety of product users." *Miles*, 922 S.W.2d at 589. California law has never been, and should not now be, construed so as to turn "every manufacturer into an insurer," *Cavers v. Cushman Motor Sales, Inc.* (1979) 95 Cal. App. 3d 338, 347-48, or to require every manufacturer to design risk-free

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[9] As Maryland's highest court noted in a similar context:

> Punitive damage awards can only affect behavior if an actor is able to conform to established standards of conduct. If the standards are constantly changing, the actor may be unable to predict accurately the line that separates desirable from undesirable conduct. A potential defendant will either become too cautious, refusing to engage in socially beneficial behavior or will follow a course of behavior that imposes more harm on society than benefit.

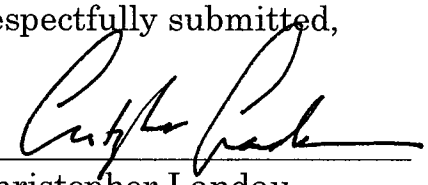
Owens-Illinois, Inc. v. Zenobia (Md. 1992) 601 A.2d 633, 652 n.19.

products, *Barker v. Lull Eng'g Co.* (1978) 20 Cal. 3d 413, 430-31. Because it is undisputed that Ford's 1997 Explorer 4x4 complied with all relevant government and industry standards, the award of punitive damages here should be reversed.

CONCLUSION

For the foregoing reasons, this Court should, at the very least, reverse the punitive damages award in this case and remand with instructions for the trial court to dismiss plaintiffs' claim for punitive damages.

Respectfully submitted,



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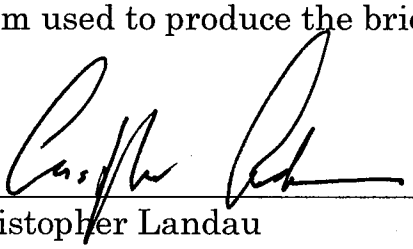
January 3, 2006

CERTIFICATE OF WORD COUNT

Pursuant to Rule 14(c)(1) of the California Rules of Court, the undersigned hereby certifies that the foregoing Brief of *Amicus Curiae* The Chamber of Commerce of the United States of America contains 4,633 words, according to the word count generated by the computer program used to produce the brief.



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January 3, 2006