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Via Federal Express

The Honorable Ronald M. George, Chief Justice
The Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *Buell-Wilson et al. v. Ford Motor Co. et al.*
No. S146150 (petition for review filed 8/28/2006)

Pursuant to California Rule of Court 28(g), the Chamber of Commerce of the United States of America respectfully submits this letter supporting the petition of Ford Motor Company for review of the Court of Appeal's decision in the above-captioned case. The Chamber is the Nation's largest federation of business companies and associations, with an underlying membership of more than 3,000,000 businesses and professional organizations of every size and in every sector and geographic region of the country. The sound and equitable application of punitive damages is a matter of great concern to the Chamber's members. The Chamber supports review here because the Court of Appeal authorized the imposition of *$55 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. Because that decision raises profound and far-reaching issues with respect to the imposition of punitive damages on a regulated industry, the Chamber supports Ford's petition for review.

1. The starting point for the analysis is the basic proposition 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; *Davis v. Hearst* (1911) 160 Cal. 143, 162; 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 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).

2. 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 further defines these terms, and makes clear that they involve "'despicable'" conduct. *College Hosp.*, 8 Cal. 4th at 721 (quoting Cal. Civil Code § 3294(c)). "Used in its ordinary sense, the adjective 'despicable' is a powerful term that refers to circumstances that are 'base,' 'vile,' or 'contemptible." *Id.* (quoting 4 Oxford English Dict. (2d ed. 1989) p. 529.) The 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.

3. Under this stringent standard, conduct that is comprehensively regulated by the Federal Government, and complies with all relevant government and industry safety standards and conclusions, cannot be so clearly and convincingly "despicable" as to warrant punitive damages as a matter of law. That is not to say, of course, that a defendant may not 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 these circumstances.[1]

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[1] Courts in other States, as well as prominent commentators, have also recognized the commonsense 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 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.

(Continued...)

4. The Court of Appeal thereby erred by holding that compliance with safety regulations is no defense to punitive damages under California law. Slip op. 49-50. The court based that holding on *Grimshaw v. Ford Motor Co.* (1981) 119 Cal. App. 3d 757, a case that *predates* the Civil Liability Reform Act of 1987. 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 was to *limit* the circumstances under which punitive damages may be awarded in this State. *See College Hosp.*, 8 Cal. 4th at 724 ("[T]he statute's reference to 'despicable' conduct seems to represent a new substantive limitation on punitive damage awards."); *see also 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 was 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 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.[2]

5. The Court of Appeal, however, insisted that *Grimshaw* controlled here, asserting that "[t]he Chamber points to nothing in the 1987 amendments, or to any

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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).

[2] The Court of Appeal also cited two cases for the unremarkable proposition that "[c]ompliance with a law or safety regulation in itself does not establish that a product is not *defective* or that a defendant who sells or rents the product for use by the public has exercised *due care*." Slip op. 50 (emphasis added; citing *Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 126-27; *Amos v. Alpha Property Mgmt.* (1999) 73 Cal.App.4th 895, 901). As noted in the text, however, the issue here is not whether compliance with government and industry standards insulates a manufacturer from *compensatory liability*, but rather whether such compliance negates the highly culpable mental state necessary to support *punitive damages*.

legislative history for those amendments, suggesting the Legislature intended to disapprove *Grimshaw*." Slip op. 50. The Court thereby missed the point. When the Legislature amends a statute, it need not specifically state that the amendment is meant to abrogate one or more particular cases. As noted above, there is no question that the 1987 amendments were intended to limit the circumstances under which punitive damages are available in California. Because those amendments were not enacted until years after *Grimshaw*, that case obviously did not consider whether conduct that complies with all relevant government and industry safety standards can nonetheless be deemed so "despicable" as to warrant punitive damages under the 1987 amendments. Cal. Civil Code § 3294(c).

6. The Court of Appeal again missed the point by asserting that "the federal government did not intend to preclude punitive damages where an auto manufacturer has met minimum safety standards." Slip op. 50-51 (citing 49 U.S.C. § 30103(e)). Neither Ford nor the Chamber made a preemption argument here, but rather a state-law argument. Needless to say, the fact that federal law does not *preclude* States from imposing punitive damages under these circumstances does not mean that States are *required* to impose punitive damages under these circumstances.

7. The Court of Appeal also erred by rejecting the Chamber's position here on the ground that it "has been proposed through legislation in California on several occasions but has not been enacted." Slip op. 52. As this Court has explained time and again, such post-enactment legislative history provides no sound basis for interpreting a statute. *See, e.g., Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 928; *Martin v. Szeto* (2004) 32 Cal.4th 445, 451; *Lolley v. Campbell* (2002) 28 Cal.4th 367, 378; *People v. Mendoza* (2000) 23 Cal.4th 896, 921; *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 28-29. The Legislature may decline to enact a bill for many reasons, including a belief that the bill is unnecessary because it simply confirms existing law. ""We can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law ... because the Legislature's failure to enact a proposed statutory amendment may indicate many things other than approval of a statute's judicial construction, including the pressure of other business, political considerations, or a tendency to trust the courts to correct its own errors." *Mendoza*, 23 Cal.4th at 921.

8. Finally, the Court of Appeal erred by asserting that "there are no federal standards for stability of vehicles." Slip op. 53. Plaintiffs here allege that (1) the Ford 4x4 vehicle was insufficiently stable, and thus prone to rollover, *and* (2) its roof was insufficiently strong, and thus prone to allow injuries in the event of a rollover. Their 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. Plaintiffs, after all, cannot establish a

"defect" in one component in isolation from the rest of the vehicle: the question is whether the vehicle *as a whole* was defective. *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.

9. With respect to roof strength, the 1997 Explorer's roof met or exceeded the relevant safety standard, Federal Motor Vehicle Safety Standard ("FMVSS") 216. *See, e.g.*, AA2618-56. The record here shows, and the Court of Appeal did not dispute, that Ford complied with this standard. For this reason alone, punitive damages are not warranted: Ford cannot be said to have acted in a "despicable" manner by making a car with a roof strong enough to meet the relevant federal safety standard. *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.

10. With respect to vehicle stability, the National Highway Traffic Safety Administration (NHTSA) carefully studied the issue for three decades and has repeatedly rejected calls to adopt the very standard for which plaintiffs contended below, based on a minimum stability index ("SSI"). NHTSA has found that adoption of a minimum SSI would require that almost all SUVs be changed in ways that could "severely reduce the capability of utility vehicles to perform their intended off-road occupational and recreational functions"—or even make SUVs less safe. *See* 52 Fed. Reg. 49033, 49036-37 (Dec. 29, 1987); 61 Fed. Reg. 28550, 28553 (June 5, 1996). Rather than adopt plaintiffs' theory of defect, NHTSA has simply required motor vehicle manufacturers to provide a warning about SUV stability, and it is undisputed that Ford complied with this requirement. Under these circumstances, such compliance is sufficient to negate the culpability necessary to justify punitive damages: the warning *is* the federal safety standard. *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). Indeed, this Court has previously recognized that policy decisions by regulators should be accorded deference even where the federal regulatory agency had studied an issue and decided *not* to impose certain regulatory standards. *Ramirez v. Plough*, 6 Cal. 4th 539, 553, 549-50 (1993) (in product liability claiming drugs should have included Spanish-language warning, recognizing that deference should be given to federal regulatory determinations in tort actions involving "matters that are peculiarly susceptible to legislative and administrative investigation and determination" and rejecting tort claim as a matter of law because FDA had studied use of multilingual labeling, but had taken no action to require warnings in any language other than English and thus presumably had concluded that the disadvantages of such warnings outweighed the advantages). Particularly in the automotive context, which is heavily regulated, it is inappropriate to permit

jurors to take on the task of regulation and override the considered judgment of expert administrative bodies.

11. 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 ill-equipped to make such decisions. *See Ramirez*, 6 Cal. 4th at 553 (holding that courts should "adopt the legislative/regulatory standard of care" "in deference to the superior technical and procedural lawmaking resources of legislative and administrative bodies"). 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.").

12. 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 products, *Barker v. Lull Eng'g Co.* (1978) 20 Cal. 3d 413, 430-31.

Because the Court of Appeals' decision authorizing the imposition of $55 million in punitive damages in this case raises profound questions of law and public policy, this Court should grant review in this case.

Respectfully submitted,

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