

# Mathias v. Accor Economy Lodging: Just Deserts?

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# **MATHIAS V. ACCOR ECONOMY LODGING: JUST DESERTS?**

## I. INTRODUCTION

The premise that “the punishment should fit the crime” is a cornerstone of Anglo-American jurisprudence.<sup>1</sup> During the past decade, this fundamental premise has been challenged by the growing frequency of multimillion dollar punitive damages awards,<sup>2</sup> which have drawn the attention of state legislatures<sup>3</sup> and raised more than one “suspicious judicial eyebrow.”<sup>4</sup> To assure that punitive damages are awarded in accord with the rule of law, the United States Supreme Court has instituted legal and doctrinal standards for measuring and reviewing the constitutional propriety of punitive damages awards.<sup>5</sup>

Punitive damages are “private fines” that are meant to punish wrongful conduct and deter its repetition.<sup>6</sup> When measuring and reviewing the constitutional propriety of a punitive damages award, the Court has mandated consideration of three guideposts.<sup>7</sup> These guideposts—“the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered . . . and [the] punitive damages award; and the difference between [the punitive damages awarded] and the civil penalties authorized or imposed in comparable cases”<sup>8</sup>—were intended to help “illuminate ‘the character of

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1. *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 676 (7th Cir. 2003); *see also* *BMW of N. Am. v. Gore*, 517 U.S. 559, 575 n.24 (1996).

2. *See* John L. Gotanda, *Punitive Damages: A Comparative Analysis*, 42 COLUM. J. TRANSNAT'L L. 391, 392-93 & nn.1, 4 (2004) (noting the general rise in the number and frequency of punitive damages awards over the last decade and the increase in punitive damages awards in excess of \$100 million).

3. *BMW of N. Am.*, 517 U.S. at 614-19 (Ginsburg, J., dissenting) (indexing state statutes limiting punitive damages awards).

4. *Id.* at 583 (quoting *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 481 (1993) (O'Connor, J., dissenting)).

5. *See* *BMW of N. Am.*, 517 U.S. at 583; *see also* *Cooper Indus. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

6. *See* *Cooper Indus.*, 532 U.S. at 432.

7. *See* *State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 418.

8. *BMW of N. Am.*, 517 U.S. at 575.

[a] standard” for lower courts to follow.<sup>9</sup> But has this “luminous” standard proved workable?

Consider the Seventh Circuit’s recent decision in *Mathias v. Accor Economy Lodging, Inc.*,<sup>10</sup> in which the court departed from some of the Supreme Court’s prior language.<sup>11</sup> In this case, the court affirmed a jury award with a ratio of roughly 37:1 punitive to compensatory damages.<sup>12</sup> The court compared the defendant’s conduct to “deliberately spitting in another person’s face”<sup>13</sup>—an outrageous act that causes only slight compensable harm, but considerable dignitary harm.<sup>14</sup> Since the defendant’s tremendous wealth would allow it to continue its outrageous conduct with impunity, the court reasoned that the 37:1 ratio represented the necessary measure of punishment and deterrence.<sup>15</sup>

This Note examines the Seventh Circuit’s decision in *Mathias*. Part II provides a summary of the facts in *Mathias*. Part III discusses the Supreme Court’s punitive damages cases. In Part IV, this Note analyzes and evaluates whether *Mathias* could withstand a constitutional challenge under the Supreme Court’s three-guidepost framework. Finally, Part V offers a brief conclusion.

## II. BEDBUG ATTACK! THE FACTS BEHIND *MATHIAS V. ACCOR ECONOMY LODGING, INC.*

Siblings Burl and Desiree Mathias checked into a Chicago-area Motel 6 in November 2003.<sup>16</sup> While guests at the motel, which rents rooms at upwards of \$100 a day, the Mathiases were bitten by bedbugs.<sup>17</sup> Alleging “willful and wanton conduct,” the siblings sued the motel and were each awarded \$186,000 in punitive damages and \$5000 in compensatory damages based on evidence that the motel had ignored a persistent pest problem.<sup>18</sup>

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9. *Id.* at 568 (quoting *Honda Motor Co. v. Oberg*, 512 U.S. 415, 420 (1994)).

10. 347 F.3d 672 (7th Cir. 2003).

11. *Id.* at 676.

12. *Compare id.* at 677 (noting that “the defendant’s aggregate net worth of \$1.6 billion” was relevant) with *State Farm Mut. Auto. Ins.*, 538 U.S. at 427 (arguing that “[t]he wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award”).

13. *Mathias*, 347 F.3d at 676.

14. *See id.* at 677.

15. *See id.* at 677-78.

16. *See id.* at 675.

17. *See id.* at 673-74.

18. *See id.* at 674. In 1998 the motel’s exterminator offered to spray the entire motel for \$500 after discovering bedbugs in several rooms; however, the motel refused. The following

Following the Northern District of Illinois' judgment in favor of the Mathiases, Motel 6 appealed, asserting that the punitive damages award—roughly thirty-seven times that of the compensatory damages—was excessive.<sup>19</sup> On appeal, the Seventh Circuit Court of Appeals affirmed,<sup>20</sup> declaring that the “judicial function is to police a range, not a point.”<sup>21</sup>

### III. PUNITIVE DAMAGES AND THE CONSTITUTION

Punitive damages serve two distinct roles: “to punish the defendant and to deter future wrongdoing.”<sup>22</sup> While state legislatures have broad discretion in authorizing and limiting punitive damages, this discretion is subject to the substantive and procedural limits of the Due Process Clause of the Fourteenth Amendment.<sup>23</sup> On the procedural side, the United States Supreme Court has held that appellate review of the constitutionality of an award of punitive damages should be *de novo*.<sup>24</sup> On the substantive side, the Court has interpreted the Due Process Clause as imposing an independent bar to “grossly excessive” punitive damages awards.<sup>25</sup> The Court, consequently, in the last decade alone invalidated state awards of \$2 million<sup>26</sup> and \$145 million<sup>27</sup> in punitive

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year the extermination service again discovered bedbugs in a room, but the motel opted to have just that room sprayed. The motel then tried to arrange for a “building sweep . . . free of charge,” but the extermination service refused. By spring 2000, the motel's manager began noticing refunds because guests had complained about “tick” bites. After personally discovering bedbugs in some of the motel's rooms, the manager reported this problem to her superior—a management-level employee of Motel 6—and recommended closing the motel so that every room could be sprayed. This recommendation was refused. The bedbug problem soon reached “farcical proportions,” such that in the months prior to the Mathiases' stay, the motel's desk clerks were “chasing . . . [guests] from room to room” to avoid the bedbugs. The desk clerks, moreover, were instructed to tell the customers that the “bedbugs” were “ticks.” Despite the infestation, on the night of the Mathiases' stay, 190 of the motel's 191 rooms were rented even though many were placed on the motel's “Do not rent, bugs in room” list. Indeed, the Mathiases' room, Room 504, was classified as “DO NOT RENT UNTIL TREATED.” Nevertheless, the motel rented Room 504 to the Mathiases, resulting in the underlying federal lawsuit. *See id.* at 674-75.

19. *See id.* at 674.

20. *See id.* at 678.

21. *Id.*

22. *See* Cooper Indus. v. Leatherman Tool Group, Inc., 532 U.S. 424, 432 (2001) (contrasting punitive damages with compensatory damages, which “redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct”).

23. *See id.* at 433.

24. *See id.*

25. *See id.* at 434; *see also* BMW of N. Am. v. Gore, 517 U.S. 559, 562 (1996).

26. *See* BMW of N. Am., 517 U.S. at 582-86.

damages. Moreover, the Court has established a three-guidepost framework for measuring and reviewing the constitutional propriety of punitive damages awards,<sup>28</sup> while eschewing bright-line or mathematical approaches.<sup>29</sup>

### A. *BMW of North America v. Gore*

Nearly a decade ago, in *BMW of North America v. Gore*,<sup>30</sup> the Supreme Court set forth a three-guidepost framework for analyzing punitive damages awards, which has become the standard of the federal excessiveness inquiry.<sup>31</sup> The case arose when Gore brought a state law fraud claim against BMW of North America alleging that the automobile distributor failed to disclose that the new car, which he had purchased from an authorized dealer, had been damaged and repainted prior to delivery.<sup>32</sup> The jury agreed and awarded Gore \$4 million in punitive damages and \$4,000 in compensatory damages; BMW appealed.<sup>33</sup> On appeal, the Alabama Supreme Court reduced the punitive damages award to \$2 million, finding that the trial jury improperly considered BMW's out-of-state conduct when computing the punitive damages award.<sup>34</sup> The United States Supreme Court reversed.<sup>35</sup>

The Court began its analysis by acknowledging "Alabama's legitimate interest in punishing BMW and deterring it from future

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27. See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 429 (2003).

28. See *BMW of N. Am.*, 517 U.S. at 575.

29. *Id.* at 582.

30. 517 U.S. 559 (1996).

31. See *id.* at 575; see, e.g., *Cooper Indus. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 441-43 (2001); *State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 418-29; *Republic Tobacco, L.P. v. N. Atl. Trading Co.*, No. 98 C 4011, 2003 WL 22794561, at \*7-10 (N.D. Ill. Nov. 21, 2003).

32. See *BMW of N. Am.*, 517 U.S. at 563. Gore drove the \$40,750 black BMW sports sedan for approximately nine months without noticing any visual flaws. It was not until Gore took the car to an independent detailer, "Slick Finish," that he discovered that his car had been damaged and repainted. Gore had wanted to make his car look "snazzier than it normally would appear." The detailer, "Mr. Slick," alerted Gore to the fact that his car had been repainted; Gore filed suit. See *id.*

33. See *id.* at 565. At trial, BMW conceded that its policy was not to inform its dealers and customers of repairs for pre-delivery damage unless the damage exceeded three percent of the car's suggested retail price. The damage to Gore's car was less than two percent of the suggested retail price; however, Gore asserted, and the jury agreed, that the damage reduced the value of his car by roughly ten percent of its original value. See *id.* at 564.

34. See *id.* at 576.

35. See *id.* at 586.

misconduct”<sup>36</sup> before turning to the question of whether the punitive damages award fell within the scope of these interests.<sup>37</sup> According to the Court, basic notions of fairness require that a person or corporation receive fair notice of the availability and magnitude of punishment a state may impose for any given conduct.<sup>38</sup> To effectuate this mandate, the Court articulated a three-guidepost standard for measuring the constitutionality of a punitive damages award.<sup>39</sup>

The first guidepost, the degree of reprehensibility, is premised on the notion that some defendants’ misconduct is more blameworthy than others.<sup>40</sup> Moreover, according to the Court, it is the “most important indicium of the reasonableness of a punitive damages award.”<sup>41</sup> Applying this factor, the Court concluded that the \$2 million punitive damages award did not reflect the enormity of BMW’s misconduct.<sup>42</sup> Gore’s injury was economic, not physical. In addition, BMW’s conduct did not present any of the traditional “aggravating factors associated with particularly reprehensible conduct.”<sup>43</sup> BMW neither evinced indifference or recklessness to another’s health or safety, nor engaged in affirmative misconduct.<sup>44</sup> The Court also noted that BMW had not made any deliberate false statements or concealed evidence of an improper motive.<sup>45</sup>

The Court then turned to the second guidepost—the ratio between the punitive damages award and the actual or potential harm to the plaintiff.<sup>46</sup> Rejecting the notion of a mathematical formula for determining the appropriate ratio,<sup>47</sup> the Court simply noted that the punitive damages award should bear a “reasonable relationship” to compensatory damages.<sup>48</sup> The 500:1 ratio awarded to Gore, however, was outside of the acceptable range.<sup>49</sup>

Finally turning to the third guidepost—available civil and criminal

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36. *Id.* at 568.

37. *See id.* at 574.

38. *See id.*

39. *See id.* at 575.

40. *See id.*

41. *Id.*

42. *See id.* at 580.

43. *Id.* at 576.

44. *See id.*

45. *See id.* at 579.

46. *See id.* at 575, 580.

47. *See id.* at 582.

48. *See id.* at 580.

49. *See id.* at 583.

sanctions for comparable misconduct<sup>50</sup>—the Court observed that in measuring the constitutionality of a punitive damages award, “‘substantial deference’ [should be given] to legislative judgments concerning appropriate sanctions for the conduct at issue.”<sup>51</sup> The comparable fine authorized by the State of Alabama for BMW’s conduct was \$2,000, well below the \$2 million awarded by the jury.<sup>52</sup>

Based on its analysis of the three guideposts, the Court concluded that BMW’s misconduct was not sufficiently outrageous to warrant the punitive damages award.<sup>53</sup> The Court further stated that fair notice requirements are just as applicable to large corporations, such as BMW, as they are to impecunious individuals.<sup>54</sup> Accordingly, the Court concluded that the punitive damages award was “grossly excessive” in light of BMW’s conduct.<sup>55</sup>

### *B. Cooper Industries v. Leatherman Tool Group, Inc.*

Four years later the Court again turned to the issue of punitive

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50. *See id.* at 575, 583.

51. *See id.* at 583 (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301 (1989) (O’Connor, J., concurring in part and dissenting in part)).

52. *See BMW of N. Am.*, 517 U.S. at 583-84.

53. *Id.* at 585.

54. *See id.* at 585-86.

55. *See id.* at 586. Justice Breyer, joined by Justices O’Connor and Souter, filed a concurring opinion. In his concurrence, Justice Breyer argued that the rule of law requires legal standards to guard against arbitrary application of the law. *See id.* at 587-88 (Breyer, J., concurring). Justice Breyer then addressed the vagueness of Alabama’s fraud statute and the inability of Alabama’s pre-guidepost standard to effectively channel the decisionmaker’s discretion in awarding punitive damages. *See id.* at 588-93 (Breyer, J., concurring). To illustrate the broadness of Alabama’s standard, Justice Breyer used it to analyze the *BMW* facts, concluding that only three of seven factors under the Alabama test might sometimes constrain arbitrary behavior. *See id.* (Breyer, J., concurring). Justice Breyer thus concluded that BMW was not afforded fair notice and that Gore’s \$2 million punitive damages award was excessive. *See id.* at 596. Justice Scalia, joined by Justice Thomas, argued in dissent. *See id.* at 598 (Scalia, J., dissenting). Rejecting the substantive due process protection the majority articulated with regard to punitive damages, Justice Scalia declared the case at bar did not warrant the “stare decisis effect.” *See id.* at 599 (Scalia, J., dissenting). Justice Scalia, moreover, pointed to what he felt constituted a loophole in the three guideposts, arguing that the guideposts could be “overridden if ‘necessary to deter future misconduct.’” *See id.* at 605 (Scalia, J., dissenting) (citation omitted). Justice Ginsberg, joined by Chief Justice Rehnquist, also filed a dissent. *See id.* at 607 (Ginsberg, J., dissenting). Justice Ginsberg argued that the majority’s decision to invalidate Alabama’s punitive damages award exceeded the Court’s traditional role and led the Court “further into territory traditionally within the State’s domain.” *See id.* at 607-615 (Ginsberg, J., dissenting).

damages in *Cooper Industries, Inc. v. Leatherman Tool Group*.<sup>56</sup> Presented with the narrow issue of what the appropriate standard of review in a punitive damages case is, the Court concluded that the determination of the constitutionality of a punitive damages award was basically a question of law;<sup>57</sup> therefore, federal courts of appeals should apply a de novo standard when reviewing the constitutional propriety of a punitive damages award.<sup>58</sup> Tracing its rationale for determining the necessary penalty in prior criminal and civil cases<sup>59</sup> and the traditional role of punitive damages,<sup>60</sup> the Court reasoned that the three-guidepost standard articulated in *Gore* would “acquire more meaningful content through case-by-case application at the appellate level.”<sup>61</sup> Hence, the Court concluded that its analogous decisions, in light of this reasoning, mandate a de novo standard of review when deciding on the constitutional propriety of an award of punitive damages.<sup>62</sup> The Court concluded that had the court of appeals applied the appropriate standard of review, the result in *Cooper* might have been different.<sup>63</sup> The Court, therefore, reversed and remanded the judgment of the court of appeals.<sup>64</sup>

### C. *State Farm Mutual Automobile Insurance Company v. Campbell*

In 2002, as lower courts struggled to apply the guideposts consistently,<sup>65</sup> the United States Supreme Court again granted certiorari

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56. 532 U.S. 424 (2001).

57. *See id.* at 437-40.

58. *See id.* at 436.

59. *See id.*

60. *See id.*

61. *See id.*

62. *See id.*

63. *See id.* at 441. Though primarily addressing the procedural aspects of the federal excessiveness inquiry, the Court took leave to address the *Cooper* facts under the three-guidepost framework. First, the Court found that the district court’s erroneous determination that the defendant acted unlawfully may have improperly influenced the jury’s punitive damages assessment. Second, the ratio factor, according to the Court, may have represented the trial court’s attempt to calculate the potential harm to the plaintiff; however, the trial court’s methodology may have included unrealistic estimates of the defendant’s future profits. Third, the Court observed that contrary to the plaintiff’s assertions that the defendant engaged in repeated wrongful conduct, the defendant’s conduct was more consistent with a “single-violation theory.” *Id.* at 441-43.

64. *See id.* at 443.

65. *See State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 417 (2003) (addressing the “imprecise manner in which punitive damages systems are administered”); *see also* Steven L. Chanenson & John Y. Gotanda, *The Foggy Road for Evaluating Punitive Damages: Lifting*



in a punitive damages case, *State Farm Mutual Automobile Insurance Company v. Campbell*.<sup>66</sup> The Campbells brought an action against State Farm alleging bad faith, fraud, and intentional infliction of emotional distress for State Farm's handling of their wrongful death and tort defense.<sup>67</sup> Following a bifurcated trial, the jury awarded the Campbells \$2.6 million in compensatory damages and \$145 million in punitive damages, which the judge reduced to \$1 million and \$25 million respectively.<sup>68</sup> Both parties appealed to the Utah Supreme Court, which reinstated the \$145 million punitive damages award in part because of State Farm's corporate policies and tremendous wealth.<sup>69</sup> This reinstatement was brief; the United States Supreme Court reversed on appeal.<sup>70</sup>

In setting forth its opinion, the 6-3 majority declared that "this case is neither close nor difficult. It was error to reinstate the jury's \$145 million punitive damages award."<sup>71</sup> After noting the function of punitive damages<sup>72</sup> and the imprecise form in which punitive damages had been administered,<sup>73</sup> the Court reiterated the importance of the

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*the Haze From the BMW/State Farm Guideposts*, 37 U. MICH. J.L. REFORM 441, 442 n.8. (2004) (addressing inconsistencies amongst lower courts applying the three guideposts when reviewing punitive damages awards).

66. 538 U.S. 408 (2003).

67. *See id.* at 412-14. While attempting to pass six vans on a two-lane highway, Curtis Campbell and his wife Inez were involved in a head-on collision. Todd Ospital, traveling opposite the Campbells at the time, swerved into the shoulder to avoid the Campbells' vehicle, only to collide with Robert Slusher. Ospital died in the accident, and Slusher suffered permanent injuries; Slusher and Ospital's estates each sued. Though Campbell was declared the cause of the accident, State Farm, his insurance company, contested liability even when the plaintiffs offered to settle. A jury found Campbell solely liable and awarded damages exceeding the Campbells' policy limit. State Farm subsequently refused to indemnify the Campbells or to bond the Campbells on appeal; the Campbells hired private counsel. Prior to judgment on the appeal, the Campbells' counsel reached an agreement to pursue a bad faith claim against State Farm in exchange for the plaintiff's agreement not to seek satisfaction on their claims. After the Utah Supreme Court denied the Campbells' appeal, the Campbells filed the underlying suit. *See id.*

68. *See id.* at 415.

69. *See id.*

70. *See id.* at 429.

71. *Id.* at 418.

72. *See id.* at 416.

73. *See id.* at 417. The Court distinguished the procedural protections afforded defendants in criminal cases from those in civil cases, noting that "[p]unitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." *Id.* (quoting *Honda Motor Co. v. Osberg*, 512 U.S. 415, 432 (1994) (O'Connor, J., dissenting) (alteration in original)). The

three guideposts when determining the constitutional propriety of an award of punitive damages.<sup>74</sup> The Court then addressed each guidepost in detail.<sup>75</sup>

Regarding the first guidepost—the degree of reprehensibility—the Court began its discussion by stating:

We have instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.<sup>76</sup>

Noting that State Farm's conduct "merits no praise,"<sup>77</sup> the Court reasoned that Utah courts overreached in punishing State Farm's misconduct and that a more modest sanction would have satisfied Utah's legitimate interests in punishment and deterrence.<sup>78</sup> The Court rejected the argument that State Farm's out-of-state conduct was relevant to show wrongful intent, declaring that "[a] defendant's dissimilar acts . . . may not serve as the basis for punitive damages" and that "[a] defendant should be punished for conduct that harmed the plaintiff, not for being an unsavory individual or business."<sup>79</sup> The Court also rejected the notion that evidence regarding third-party claims was relevant to first-party claims, stating that the reprehensibility analysis required the Campbells to show wrongful conduct similar to that which

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Court concluded that "[e]xacting appellate review" was required to assure application of the rule of law. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003).

74. *See id.* at 418.

75. *See id.* at 418-29.

76. *Id.* at 419 (citing *BMW of N. Am. v. Gore*, 517 U.S. 559, 576-77 (1996)). The Court also noted that "[t]he existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award, and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant[] . . . is so reprehensible as to warrant the imposition of further sanctions to achieve punishment and deterrence." *Id.* (citing *BMW of N. Am.*, 517 U.S. at 575).

77. *Id.*

78. *See id.* at 419-20.

79. *Id.* at 422-23.

harmed them.<sup>80</sup>

The Court then turned to the second guidepost—the ratio between actual or potential harm and the award of punitive damages.<sup>81</sup> As it did in *BMW of N. Am. v. Gore*,<sup>82</sup> the Court again refused to place bright-line limitations on the permissible ratio of punitive damages.<sup>83</sup> Instead, the Court observed that “[s]ingle-digit multipliers are more likely to comport with due process, while still achieving the State’s goals of deterrence and retribution.”<sup>84</sup> In this case, the jury awarded the Campbells a damages ratio of 145:1, punitive to compensatory.<sup>85</sup> Moreover, the Court admonished the Utah Supreme Court for departing from the “well-established constraints on punitive damages.”<sup>86</sup> Specifically, the Court rejected the argument that State Farm’s assets protected it from punishment except in the rare case: “The wealth of the defendant cannot justify an otherwise unconstitutional punitive damages award.”<sup>87</sup>

After discussing the first two guideposts at length, the Court determined that it “need not dwell long on [the third] guidepost”<sup>88</sup>—the available civil and criminal sanctions for comparable misconduct.<sup>89</sup> The Court dismissed the utility of available criminal sanctions in the analysis of the third guidepost, despite its observation that criminal sanctions illustrate a State’s commitment to punishing and deterring a particular wrongful act.<sup>90</sup> The \$10,000 civil penalty in Utah for fraud, which State Farm could have been subject to, was well below the \$145 million awarded by the jury.<sup>91</sup>

The Court, therefore, determined that Utah’s award of punitive damages exceeded the constitutional limits.<sup>92</sup> The Court reversed and

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80. *See id.* at 424.

81. *See id.*

82. 517 U.S. 559, 582 (1996).

83. *See State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 425.

84. *Id.*

85. *See id.* at 426.

86. *Id.* at 427.

87. *Id.* (citing *BMW of N. Am.*, 517 U.S. at 585).

88. *Id.* at 428.

89. *BMW of N. Am.*, 517 U.S. at 575.

90. *See State Farm Mut. Auto. Ins. Co.*, 538 U.S. at 428. Addressing this issue, the Court stated that the civil process could not be used as a substitute for the criminal process, which provides defendants with an elevated level of procedural protection. *See id.*

91. *See id.*

92. *See id.* at 429.

remanded the case to the Utah Supreme Court for further proceedings.<sup>93</sup>

IV. COULD *MATHIAS V. ACCOR ECONOMY LODGING, INC.*  
WITHSTAND A CONSTITUTIONAL CHALLENGE UNDER THE THREE-  
GUIDEPOST STANDARD?

In *Mathias v. Accor Economy Lodging, Inc.*,<sup>94</sup> the Seventh Circuit Court of Appeals affirmed a jury award of \$372,000 in punitive damages and \$10,000 in compensatory damages for a motel's gross negligence in renting rooms infested with bedbugs.<sup>95</sup> Unlike *State Farm Mutual Automobile Insurance v. Campbell*,<sup>96</sup> this case was close and difficult.

After rejecting the defendant's claim of simple negligence,<sup>97</sup> the Seventh Circuit began its analysis with a discussion of the pertinent facts,<sup>98</sup> in which it determined there was sufficient evidence of "willful and wanton misconduct" to warrant an award of punitive damages.<sup>99</sup> Turning to the question of the appropriate amount of damages, the court recognized that the 37:1 ratio at issue in *Mathias* exceeded the suggested constitutional limits articulated by the United States Supreme Court.<sup>100</sup> The court, however, declined to place a presumptive limit on the ratio of damages.<sup>101</sup> Instead, the court recounted basic penal concepts<sup>102</sup> and analyzed the historical function of punitive damages.<sup>103</sup>

93. See *id.* Justice Ginsberg continued her dissent from *BMW of N. Am v. Gore*, 517 U.S. 559 (1996), arguing that "damages-capping legislation may be altogether fitting and proper" in this case. *Id.* at 431 (Ginsberg, J., dissenting). Hence, Justice Ginsberg reasoned, the "Court has no warrant to reform state law governing awards of punitive damages." *Id.* at 438 (Ginsberg, J., dissenting) (citation omitted).

94. 347 F.3d 672 (7th Cir. 2003).

95. See *id.* at 678.

96. 538 U.S. 408 (2003).

97. See *Mathias*, 347 F.3d at 675.

98. See *id.* at 674-76; see *supra* Part II.

99. *Mathias*, 347 F.3d at 675.

100. See *id.* Specifically, the court noted that "'four times the amount of compensatory damages might be close to the line of constitutional impropriety'" and that "'few awards [of punitive damages] exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, satisfy due process.'" See *id.* (quoting *State Farm Mut. Ins. Co.*, 538 U.S. at 425) (alteration in original) (citations omitted).

101. See *Mathias*, 347 F.3d at 676.

102. See *id.* These concepts include the following: (1) the punishment should fit the crime—punishment should be proportionate in most cases; however, courts may impose harsher penalties for hard to detect misconduct; (2) the defendant should have fair notice; and (3) the sanctions should be based on the defendant's wrongful conduct, not the defendant's status. See *id.*

103. See *id.* at 676-77.

The court explained that minor assaults such as “deliberately spitting in a person’s face”<sup>104</sup> cannot be deterred by compensatory damages, which are inevitably low.<sup>105</sup> Rather, an appropriate measure of punishment must be sufficient enough to prevent the defendant from “commit[ting] the offensive act with impunity provide[d] . . . a willing[ness] to pay.”<sup>106</sup> In the instant case, Accor’s conduct was similar to the spitting example—an outrageous act that causes only slight compensable harm, but considerable dignitary harm.<sup>107</sup> The court, therefore, determined that the 37:1 ratio was justified since the Mathiases’ harm was hard to quantify.<sup>108</sup> Further, Accor’s misconduct was difficult to detect and potentially profitable.<sup>109</sup> Last, the court noted that the ratio was appropriate because, if capped, the plaintiffs may have had difficulty financing their suit against aggressive defense tactics.<sup>110</sup> In this respect, the court stated, the wealth of the defendant becomes a basis for awarding punitive damages to deter defendants from “investing in developing a reputation intended to deter plaintiffs” from filing lawsuits.<sup>111</sup>

While the parties did not raise the issue, the Seventh Circuit noted the Supreme Court’s recommendation that appellate courts examine comparable regulatory or criminal penalties.<sup>112</sup> Taking judicial notice of the penalties under Illinois and Chicago law<sup>113</sup> to which Accor could be subject—including a fine or the revocation of its operating license<sup>114</sup>—the court concluded that Accor “would prefer to pay the punitive

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104. *Id.*

105. *See id.* The court reasoned that compensatory damages would not do the “trick” in the cases similar to the spitting incident because (1) “they are difficult to determine in the case of acts that inflict largely dignitary harms”; (2) “in the spitting case they would be too slight to give the victim an incentive to sue, and he might decide instead to respond with violence”; and (3) “to limit the plaintiff to compensatory damages would enable the defendant to commit the offensive act with impunity provided that he was willing to pay.” *Id.* at 677.

106. *See id.*

107. *See id.* at 676-77.

108. *See id.*

109. *See id.*

110. *See id.*

111. *Id.*

112. *See id.* at 678.

113. *See id.* The court noted that Accor’s misconduct could fall under Illinois’ reckless misconduct statute, 720 ILCS 5/12-5(a), which carries a penalty of \$2500. *See id.*

114. *See id.* Chicago Municipal Code proscribes hotels from permitting unsanitary conditions. *See id.* (citing Chi. Munic. Code §§ 4-4-280, 4-208-020, 050, 060, 110).

damages assessed . . . than to lose its license.”<sup>115</sup>

Though it is difficult to find fault with the Seventh Circuit’s rationale in *Mathias v. Accor Economy Lodging*,<sup>116</sup> the court’s reasoning represents a broad departure from precedent that may not withstand a constitutional challenge. Despite declaring that “punitive damages should be admeasured by standards or rules rather than in a completely ad hoc manner,”<sup>117</sup> the court’s opinion departs significantly from the three-guidepost standard mandated by the United States Supreme Court.<sup>118</sup> Indeed, a careful search of the opinion reveals that the word “guidepost” does not appear anywhere.<sup>119</sup> To better illustrate this unprecedented departure, it is necessary to address each guidepost in detail.

While Accor’s behavior “merits no praise,”<sup>120</sup> a careful application of the first guidepost as articulated in *State Farm Mutual Automobile Insurance Co. v. Campbell*<sup>121</sup> suggests that a lower punitive damages award may have been appropriate. *State Farm* listed five “aggravating factors,”<sup>122</sup> only two of which may be applicable here: whether “the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others” and whether “the conduct involved repeated actions or was an isolated incident.”<sup>123</sup> On the other hand, the Mathiases’ harm was admittedly emotional, not physical.<sup>124</sup> Moreover, the record fails to show evidence of the Mathiases’ financial vulnerability or an effort by Accor to trick or deceive the Mathiases into renting a room with bedbugs.<sup>125</sup>

Under the second guidepost, ratio, the Seventh Circuit’s relegation of the Supreme Court’s statements regarding “single-digit ratio[s]”<sup>126</sup> to dicta represents a departure from the “well-established constraints on punitive damages.”<sup>127</sup> Even more constitutionally suspect was the

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115. *Id.*

116. 347 F.3d 672.

117. *See id.* at 676.

118. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 413 (2003).

119. *See Mathias*, 347 F.3d at 672-78.

120. *See State Farm Mut. Auto. Ins.*, 538 U.S. at 419.

121. 538 U.S. 408.

122. *See id.* at 419.

123. *Id.*

124. *See Mathias*, 347 F.3d at 677.

125. *See id.* at 673-76.

126. *See id.* at 675-76.

127. *See State Farm Mut. Auto. Ins.*, 538 U.S. at 427.

court's consideration of the defendant's wealth.<sup>128</sup> The Seventh Circuit's opinion is expressly aimed at deterring aggressive trial tactics, not the unsanitary motel accommodations at issue.<sup>129</sup> Despite the mandate of de novo review, considering this evidence that had no bearing on the defendant's wrongful conduct, invites arbitrary results.<sup>130</sup> Moreover, the court's rationale encourages large corporations to settle "modest" claims and is, therefore, repugnant to the "Aristotelian notion of corrective justice [that] . . . a person is punished for what he does, not who he is, even if the who is a huge corporation."<sup>131</sup>

Applying the third guidepost, the Seventh Circuit's consideration of the revocation of Accor's operating license as a comparable penalty, set the constitutional bar too high.<sup>132</sup> To be sure, "[t]his is the 'nuclear option,' one which would completely destroy a defendant's business."<sup>133</sup> Moreover, the court ignored the implications of the minor penalty for reckless-misconduct in Illinois.<sup>134</sup> Though the possibility of prison time has no relevance to a corporation, the penalty still has utility as a gauge of the state legislature's view of the seriousness of the offense.<sup>135</sup> By ignoring the underlying utility of the reckless misconduct penalty outright, the Seventh Circuit's comparative analysis was constitutionally deficient.<sup>136</sup>

## V. CONCLUSION

In sum, the legitimacy of an award of punitive damages requires that the rule of law rise above the individual whims of a judge or jury. Instead, a decision to award punitive damages must be grounded in the rules and standards set forth by the principles of stare decisis. While punitive damages serve the state's legitimate interests in punishment and deterrence, the Constitution proscribes their arbitrary imposition. By departing from the "well-established constraints on punitive damages,"<sup>137</sup> the Seventh Circuit's decision in *Mathias v. Accor*

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128. See *Mathias*, 347 F.3d at 677.

129. See *id.*

130. See *State Farm Mut. Auto. Ins.*, 538 U.S. at 417.

131. See *Mathias*, 347 F.3d at 676.

132. See *id.* at 678.

133. See *Chanenson & Gotanda*, *supra* note 65, at 480.

134. See *Mathias*, 347 F.3d at 678.

135. See *id.*; see *supra* note 105 and accompanying text.

136. See *Mathias*, 347 F.3d at 678.

137. See *State Farm Mut. Auto. Ins.*, 538 U.S. at 427.

*Economy Lodging, Inc.*<sup>138</sup> carries the presumption of arbitrariness. Accordingly, under the United States Supreme Court's current punitive damages jurisprudence, it is unlikely that the holding in *Mathias* could withstand judicial review.

BOOKER T. COLEMAN, JR.

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138. 347 F.3d 672 (7th Cir. 2003).



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