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IN THE SUPREME COURT OF TENNESSEE

JEREMY FLAX and RACHEL SPARKMAN, as the Natural Parents of Joshua Flax, Deceased; and RACHEL SPARKMAN, Individually,	)	
Plaintiffs-Appellants,	)	
vs.	)	**No. M2005-01768-SC-R11-CV**
DAIMLERCHRYSLER, CORPORATION,	)	
Defendant-Appellee,	)	**Davidson County Circuit Court No. 02C-1288**
LOUIS A. STOCKELL, JR.,	)	
Defendant.	)	

BRIEF OF *AMICUS CURIAE*, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, IN SUPPORT OF DEFENDANT-APPELLEE

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INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents the question whether Tennessee juries may impose not only *liability* but also *punitive damages* upon the manufacturer of a motor vehicle that not only complied with but exceeded all relevant government 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 Tennessee law, and are available only in extreme and egregious circumstances. Where, as here, a product manufacturer complies with all relevant government safety standards, there is a heavy presumption that the extraordinary circumstances necessary to warrant punitive damages are not present as a matter of law. As the Court of Appeals recognized, plaintiffs here simply failed to overcome that heavy presumption. That straightforward point is the beginning and the end of the punitive damages issue in this case.

Plaintiffs, however, assert that the Court of Appeals usurped the trial court's role "as the 13th juror in punitive damages cases," Pls.' Br. 45, and thereby engaged in "pure judicial legislating," *id.* at 27. That inflammatory rhetoric is sorely misplaced. Punitive damages may be awarded in this State *as a matter of law* only where the plaintiff proves by "clear and convincing evidence" that the defendant has engaged in the "most egregious" conduct. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992). Whether a plaintiff has crossed this *legal* threshold is a question of *law* subject to *de novo* review. As the Court of Appeals explained, it would be truly extraordinary to hold that manufacturing a motor vehicle that not only complied with but exceeded all relevant government safety standards can be so

egregious as to warrant punitive damages. That is particularly true, as the court further noted, in light of Tennessee's statute providing that "[c]ompliance by a manufacturer or seller with any federal or state statute or administrative regulation ... shall raise a rebuttable presumption that the product is not an unreasonably dangerous condition in regard to matters covered by these standards." T.C.A. § 29-28-104. Even where that statutory presumption is rebutted for purposes of establishing liability for compensatory damages, it is hard to imagine how the statutory presumption would not negate "clear and convincing evidence" that a manufacturer engaged in the "most egregious" misconduct warranting liability for punitive damages.

At a broader level, plaintiffs' attack on the Court of Appeals misses the point that meaningful appellate review of punitive damages awards is a critical safeguard of due process. Although a trial court has both the power and the duty to act as a "gatekeeper" over punitive damages, and to review jury verdicts where the issue goes to the jury, that role does not diminish the role of the appellate courts. The issue here, after all, is not merely that the jury awarded *excessive* punitive damages (as the trial court recognized), but that the jury should not have been allowed to award *any* punitive damages at all (as the Court of Appeals recognized). Limiting the *amount* of punitive damages is no substitute for limiting the *availability* of punitive damages. Because this case does not remotely present the extraordinary circumstances where such damages may be warranted as a matter of law, this

Court should affirm the Court of Appeals' judgment reversing the trial court's award of $20 million in punitive damages.[1]

ARGUMENT

The Court of Appeals Correctly Held That Plaintiffs Failed To Overcome The Heavy Presumption That Punitive Damages Are Unwarranted Where, As Here, The Defendant Complied With All Relevant Government Safety Standards.

The Court of Appeals below correctly held that the trial court erred by ordering DaimlerChrysler to pay plaintiffs *$20 million* in punitive damages (on top of the *$7.5 million* in compensatory damages they received) even though the record is undisputed that the 1998 Dodge Caravan at issue in this case not only complied with but exceeded all relevant government safety standards. This Court should affirm that sensible result. As the United States Supreme Court recently observed, "[w]here ... agency guidance" permits or authorizes a defendant's conduct, "it would defy history and current thinking to treat [that] defendant ... as a knowing or reckless violator." *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201, 2216 n.20 (2007). Our legal system may not always produce perfect justice, but this Court should not allow it to become an engine of arbitrariness and injustice.

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.*, *Hodges*, 833 S.W.2d at 900; *Huckeby*

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[1] The Chamber agrees with other arguments presented in appellee's opening brief, but will limit this *amicus* brief to the propriety of awarding punitive damages based on conduct that complies with all relevant government safety standards.

v. Spangler, 563 S.W.2d 555, 558-59 (Tenn. 1978); 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 the civil law is normally concerned with compensating victims for actual injuries sustained at the hands of a tortfeasor. Charles T. McCormick, *Handbook on the Law of Damages* § 77, at 275 (1935); *see also Vaughn v. Park Healthcare Co.*, No. 01-A-01-9404-CH00194, 1994 WL 684485, at *8 (Tenn. Ct. App. 1994) ("For years the courts of Tennessee and other jurisdictions have struggled with the self-evident fact that punitive damages constitute a *windfall* for the plaintiff.") (emphasis added).

In Tennessee, the parameters of that "exception" are set forth in this Court's landmark *Hodges* decision: 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 "the most egregious of wrongs." 833 S.W.2d at 901. What that standard means, as the *Hodges* Court explained, is that "[i]n Tennessee, ... a court may ... award punitive damages only if it finds a defendant has acted either (1) intentionally, (2) fraudulently, (3) maliciously, or (4) recklessly." *Id.* The *Hodges* Court strictly defined these categories by explaining that each involves intentional, willful, or conscious wrongdoing. *Id.; see also Cappello v. Duncan Aircraft Sales of Fla., Inc.*, 79 F.3d 1465, 1474-75 (6th Cir. 1996) (applying Tennessee law). In particular, the *Hodges* court expressly linked the standard of "recklessness" necessary to warrant punitive damages to the standard of "recklessness" under the *criminal* law. *See Hodges*, 833 S.W.2d at 901 (citing T.C.A.

§ 39-11-302(c)). That demanding standard is appropriate, the *Hodges* Court explained, because "fairness requires that a defendant's wrong be clearly established before punishment, as such, is imposed; awarding punitive damages only in clearly appropriate cases better effects deterrence." *Id.*

Needless to say, the strict limitations set forth in *Hodges* would be entirely meaningless if trial courts were free to submit the issue of punitive damages to a jury 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 egregious to meet the demanding standard of culpability set forth in *Hodges*. That demanding legal standard is not hortatory; it provides the *sole* basis for an award of punitive damages under Tennessee law.

In light of this basic principle, this should be an easy case. 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 ("FMVSS") to address all pertinent safety concerns. Among these standards is a specific federal standard for seat strength, FMVSS 207. It is undisputed that the seats in the 1998 Dodge

Caravan at issue here not only met, but "drastically exceeded," Ct. Apps. slip op. 29, the requirements set forth in that standard.

Plaintiffs, however, insist that the federal regulatory scheme governing motor vehicle safety does not preempt state law. In particular, plaintiffs cite 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 plaintiffs, that provision governs this case, and the Court of Appeals "violate[d] federal law," Pls.' Br. 50, by looking to the federal safety standard in concluding that the conduct challenged here was not sufficiently egregious to warrant punitive damages.

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 of Tennessee tort law. Under that law, conduct that complies with all relevant government safety standards simply cannot be deemed sufficiently "egregious" to warrant the imposition of punitive damages. *Hodges*, 833 S.W.2d at 901; *cf. Schultz v. Ford Motor Co.*, 857 N.E.2d 977, 988 (Ind. 2006) ("While the saving clause is a clear expression that Congress did not intend to create a federal defense, it does not restrict a state sovereign from altering its common law to place some particular value upon compliance with federal safety standards.").

Plaintiffs also contend that the federal safety standard is "meaningless" in this case, Pls.' Br. 47, because it establishes only "minimum" requirements, *see id.* at 46-47. That contention is incorrect. While it is certainly true that the federal safety standard establishes "minimum," as opposed to "maximum," safety requirements, that just means that manufacturers are free to *exceed* the federal requirements (as DaimlerChrysler in fact did). But the key point here is that the federal requirements have been determined, by the experts at NHTSA, to "meet the need for motor vehicle safety." 49 U.S.C. § 30111. How plaintiffs can possibly contend that compliance with those requirements rises to the level of criminal recklessness is a mystery.

It is no answer to argue, as plaintiffs do, that the federal safety standard is "inadequate." Pls.' Br. 47-48. The short response to that argument is that juries in this State do not sit to second-guess the adequacy of federal safety standards. The proper forum for challenging those standards is the federal regulatory agency, not a courtroom. *See, e.g., Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 348 (2001). Plaintiffs are obviously free to disagree with federal regulatory requirements, but they are not free to force DaimlerChrysler to pay $20 million in punitive damages based on conduct that not only complied with but greatly exceeded those requirements. *See id.* Indeed, as DaimlerChrysler explains in its brief, NHTSA has already considered, and expressly rejected, the very regulatory standard now proposed by plaintiffs. *See* Def.'s Br. 14-17. As the agency made clear, motor vehicle safety is not a one-way street. Making the front seats stiffer

may enhance the safety of back-seat passengers, but would compromise the safety of front-seat passengers. *See id.* That is precisely why the proper entity to balance these competing considerations is a federal regulatory agency, not an individual jury confronting the highly emotional death of an infant placed in the back seat.

Nor is it true, as plaintiffs suggest, that FMVSS 207 applies only to seat strength in *stationary* vehicles. *See* Pls.' Br. 46-47. Federal law defines "motor vehicle safety" as "the performance of a motor vehicle ... in a way that protects the public ... against unreasonable risk of death or injury *in an accident.*" 49 U.S.C. § 30102(8) (emphasis added). Needless to say, this standard presupposes a vehicle in motion: stationary vehicles are not typically involved "in an accident." *Id.* Indeed, FMVSS 207 by its very terms "establishes requirements for seats, their attachment assemblies, and their installation to minimize the possibility of their failure by forces acting on them *as a result of vehicle impact.*" 49 C.F.R. § 571.207 (emphasis added). Plaintiffs' own expert conceded that seats in the 1998 Dodge Caravan not only complied with but nearly tripled the federal safety standard, which mandates that a seat must be strong enough to withstand a rearward movement of 3,300 inch-pounds. 11/8 Tr. 240. Notably, plaintiffs do not contend that the particular seat at issue here was defectively manufactured, or otherwise failed to comply with the federal safety standard for seat strength.

The upshot of that point, as the Court of Appeals recognized, is that plaintiffs bear the burden of overcoming the heavy presumption that compliance with government safety standards is not criminally reckless conduct. Not surprisingly,

plaintiffs here (like plaintiffs in many other cases) simply failed to carry that burden as a matter of law. *See, e.g., Stone Man, Inc. v. Green*, 435 S.E.2d 205, 206 (Ga. 1993) ("[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.*, 922 S.W.2d 572, 589-90 & n.7 (Tex. Ct. App. 1996), *aff'd in part, rev'd in part on other grounds*, 967 S.W.2d 377 (Tex. 1998); *Chrysler Corp. v. Wolmer*, 499 So. 2d 823, 826 (Fla. 1986); *American Cyanamid Co. v. Roy*, 498 So. 2d 859, 862-63 (Fla. 1986); *Satcher v. Honda Motor Co.*, 52 F.3d 1311, 1316-17 (5th Cir. 1995) (applying Mississippi law); *Richards v. Michelin Tire Corp.*, 21 F.3d 1048, 1058 n.20 (11th Cir. 1994) (applying Alabama law); *Drabik v. Stanley-Bostitch, Inc.*, 997 F.2d 496, 510 (8th Cir. 1993) (applying Missouri law); *Alley v. Gubser Dev. Co.*, 785 F.2d 849, 856 (10th Cir. 1986) (applying Colorado law); *Brand v. Mazda Motor Corp.*, 978 F. Supp. 1382, 1394-95 (D. Kan. 1997) (applying Kansas law); *Welch v. General Motors Corp.*, 949 F. Supp. 843, 844-46 (N.D. Ga. 1996) (applying Georgia law); *Boyette v. L.W. Looney & Son, Inc.*, 932 F. Supp. 1344, 1347-48 (D. Utah 1996) (applying Utah law); *Sloman v. Tambrands, Inc.*, 841 F. Supp. 699, 703 n.8 (D. Md. 1993) (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). Indeed, were that not the case, and were juries free

to impose punitive damages based on conduct that complied with all relevant government safety standards, then the imposition of such damages would truly be arbitrary and capricious, and serious constitutional questions would be presented.

Plaintiffs thus err by asserting that the Court of Appeals below erected "an *absolute, irrebuttable* bar to punitive damages" based upon compliance with federal safety standards. Pls.' Br. 49 (emphasis added); *see also id.* at 50 (charging Court of Appeals with establishing an "irrebuttable presumption against punitive damages"). Even cursory review of the decision below negates that assertion. The Court of Appeals simply and correctly noted that "compliance with FMVSS 207 *weighs heavily* in Appellant's favor against a clear and convincing finding of recklessness that might warrant punitive damages." Ct. Apps. slip op. 30 (emphasis added). Although, in all candor, it is hard to imagine a situation in which compliance with a federal safety standard amounts not only to tortious but criminally reckless conduct, the Court of Appeals did not close the door on that possibility.

Plaintiffs further err by asserting that "[t]he implications of [the decision below] are huge," because "[b]y judicial fiat, the Western Section has effectively done away with punitive damages in all auto products liability cases in Tennessee." Pls.' Br. 50. Putting aside plaintiffs' mischaracterization of the scope of the holding below, that assertion is wrong for two obvious reasons. *First*, not all automotive product liability cases involve challenges to a component whose design is governed by an on-point federal safety standard. NHTSA has not promulgated a safety

standard governing every single component of every automobile. But where, as here, NHTSA has studied a specific issue (seat strength), and promulgated a particular safety standard (FMVSS 207), plaintiffs cannot claim that compliance with that on-point standard represents criminally reckless conduct. *Second*, not all automotive product liability cases involve challenges to a component that *in fact* complies with an on-point federal standard. To the contrary, many cases involve allegations of manufacturing defect, where the plaintiff asserts that the manufacturer *failed* to comply with an on-point federal standard. Again, this is not such a case: plaintiffs here do not deny that DaimlerChrysler not only complied with but greatly exceeded the federal safety standard governing seat strength.

Needless to say, plaintiffs also err by asserting that the Court of Appeals' application of the *Hodges* standard in this case "invade[d] the province of the jury." Pls.' Br. 50. There is no right to jury resolution of issues that are susceptible to only one answer as a matter of law; that is why summary judgment does not violate the right to trial by jury. *See, e.g., Union Planters Nat'l Bank v. Inman*, 588 S.W.2d 757, 760 (Tenn. Ct. App. 1979); *cf. In re Peterson*, 253 U.S. 300, 310 (1920); *Pease v. Rathbun-Jones Eng'g Co.*, 243 U.S. 273, 278 (1917); *Fidelity & Deposit Co. of Md. v. United States ex rel. Smoot*, 187 U.S. 315, 320 (1902). It is thus entirely appropriate, as well as routine, for courts to determine that punitive damages are not warranted as a matter of law in particular cases, and to remove that issue from the jury. *See, e.g., Goodale v. Langenberg*, No. W2003-01919-COA-R3-CV, 2007 WL 1836901, at *12 (Tenn. Ct. App. June 26, 2007); *Barnett v. Lane*, 44 S.W.3d 924,

928-29 (Tenn. Ct. App. 2000); *Jarmakowicz v. Suddarth*, No. M1998-00920-COA-R3-CV, 2001 WL 196982, at *12-15 (Tenn. Ct. App. Feb. 28, 2001); *Nelms v. Walgreen Co.*, No. 02A01-9805-CV-00137, 1999 WL 462145, at *2-6 (Tenn. Ct. App. July 7, 1999); *Spivey v. Freels*, No. 01-A-019203CH00091, 1992 WL 311091, at *2 (Tenn. Ct. App. Oct. 28, 1992); *see also Leap v. Malone*, No. 95-6470, 1996 WL 742306, at *2 (6th Cir. Dec. 23, 1996) (applying Tennessee law); *Cappello*, 79 F.3d at 1474-75 (same); *Womack v. Gettelfinger*, 808 F.2d 446, 453 (6th Cir. 1986) (same); *Alexander v. Kappa Alpha Psi Fraternity, Inc.*, 464 F. Supp. 2d 751, 757-58 (M.D. Tenn. 2006) (same); *McBride v. Shutt*, No. 00-1302, 2002 WL 1477211, at *5 (W.D. Tenn. July 2, 2002) (same); *cf. Safeco,* 127 S. Ct. at 2215-16 (punitive damages unwarranted as a matter of law in light of insufficient evidence of requisite recklessness).

Indeed, contrary to plaintiffs' suggestion that the Court of Appeals exceeded its proper role in this case, due process not only *allows* but *requires* meaningful appellate review of punitive damages awards. *See, e.g., Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 15 (1991) (noting that appellate review is a critical common-law procedure that ensures rationality of punitive damages awards); *id.* at 21 ("This appellate review makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition."); *cf. Honda Motor Co. v. Oberg*, 512 U.S. 415, 420-35 (1994) (state law denying any judicial review of the size of punitive damages awards violates due process). That is precisely why this Court in *Hodges* took the unusual

step of requiring trial courts to "clearly set forth the reasons for decreasing or approving all punitive awards in findings of fact and conclusions of law demonstrating a consideration of all factors on which the jury is instructed." 833 S.W.2d at 902; *see also Emerson v. Oak Ridge Research, Inc.*, 187 S.W.3d 364, 373-74 (Tenn. Ct. App. 2005) (reversing award of punitive damages in light of trial court's failure to "make sufficient fact findings and conclusions of law"). The whole point of this procedural requirement, of course, is to facilitate meaningful appellate review. Needless to say, such review sometimes will lead an appellate court to conclude that the trial court erred as a matter of law in submitting the issue of punitive damages to the jury. Such a conclusion does not undermine the system; rather, such a conclusion shows that the system is working.

The bottom line here is that allowing defendants to be punished for conduct that complies with all relevant government 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.*, 775 F. Supp. 857, 861-62 (D. Md. 1991) ("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."). 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, 601 A.2d 633, 652 n.19 (Md. 1992) (internal quotation omitted).

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 the product users." *Miles*, 922 S.W.2d at 589. Tennessee law has never been, and should not now be, construed so as to turn every manufacturer into an insurer, or to require every manufacturer to design risk-free products. Because it is undisputed that the seats in the 1998 Dodge Caravan at issue here complied with all relevant government safety standards, the Court of Appeals correctly reversed the award of punitive damages.

CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals' judgment reversing the award of punitive damages.

Respectfully submitted,

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