SUPREME COURT OF LOUISIANA

NO. 2016-C-1647

RON WARREN, INDIVIDUALLY AND ON BEHALF OF
THE ESTATE OF DEREK HEBERT

VERSUS

SHELTER MUTUAL INSURANCE COMPANY, ET AL.

AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF-APPELLEE-RESPONDENT, RON WARREN,
BY THE LOUISIANA ASSOCIATION FOR JUSTICE AND
THE AMERICAN ASSOCIATION FOR JUSTICE

Civil Proceeding

Writ of Certiorari or Review Directed to the
Court of Appeal, Third Circuit
Docket Nos. 15-354 c/w 15-838 c/w 15-1113

On Devolutive and Suspensive Appeals from the
14th Judicial District Court for the Parish of Calcasieu
Docket No. 2006-385, Division A
Hon. D. Kent Savoie, District Judge

Respectfully submitted,

LOUISIANA ASSOCIATION FOR JUSTICE
AMERICAN ASSOCIATION FOR JUSTICE

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LOUISIANA ASSOCIATION FOR JUSTICE
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IN SUPPORT OF PLAINTIFFS-RESPONDENTS

The Louisiana Association for Justice ("LAJ") and the American Association for Justice ("AAJ") (collectively "the Associations") respectfully submit this *amicus curiae* brief in support of the Plaintiff-Appellee-Respondent, Ron Warren.

I. PRELIMINARY STATEMENT

The Associations wish to address three issues raised by defendant Teleflex, Inc., and the *amicus curiae* briefs filed in support of Teleflex: (1) Are punitive damages available under the maritime law in this case?; (2) Is there a "mandatory 1:1 ratio" between punitive damages and compensatory damages in all maritime cases?; and (3) Whether the punitive damages award in this case, which is less than one percent of the defendant's net worth, and is less than three times the potential harm, was excessive under the applicable U.S. Supreme Court jurisprudence?

II. THE INTEREST OF THE LOUISIANA ASSOCIATION FOR JUSTICE AND THE AMERICAN ASSOCIATION FOR JUSTICE

LAJ and AAJ have three primary interests in this case.

First, the Associations seek to protect the health and well-being of the citizens of this state, including maritime workers and small businesses, by deterring wrongful conduct. There are more than 420,000 small businesses in the State of Louisiana. *See* https://www.sba.gov/advocacy/small-business-profiles-states-and-territories-2014 ("Small Business Profile" for Louisiana, 2014) (accessed Feb. 11, 2017) (noting that there are 424,475 small businesses in Louisiana). Louisiana's small businesses make up more than 97 percent of all employers in the state and employ over half of the state's private workforce. *Id.* Nearly one-fifth of Louisiana's businesses have fewer than twenty employees. *Id.*

For small businesses, losing an employee to death or injury can be devastating. All businesses and workers in this State have an interest in reducing the risk of serious injury and death, and the resulting loss of work. Punitive damages play an important role in creating incentives for businesses to manufacture safer products and deterring them from reckless conduct which injures the workers and employers of this State. For most businesses in this State, there is a far greater risk of losing their employees to injury from defective products than being required to pay a punitive damage award.

Second, the Associations desire to encourage and provide incentives for the manufacture of safer products which are used in this state.

Third, LAJ and AAJ seek to protect an open and available Court system for the redress of injuries.

III. DISCUSSION

A. Punitive damages serve an important societal purpose in deterring wrongful conduct and improving safety.

The modern Anglo-American doctrine of punitive damages dates back at least to 1763. *Exxon Shipping Co. v. Baker ("Baker"),* 554 U.S. 471, 128 S. Ct. 2605, 2620, 171 L. Ed. 2d 570 (2008). Legal codes from ancient times through the Middle Ages called for multiple damages for certain especially harmful acts. *Baker*, 128 S. Ct. at 2620. [T]he consensus today is that punitives are aimed … principally at **retribution** and **deterring harmful conduct**." *Baker*, 128 S. Ct. at 2621 (emphasis added). They are given to the plaintiff "for the purpose of **punishing the defendant**, of **teaching the defendant not to do it again**, and of **deterring others** from following the defendant's example." *Mosing v. Domas*, 2002-0012 (La. 10/15/02), 830 So. 2d 967, 978 (emphasis added).

B. Punitive damages are available in this case under the general maritime law.

The suggestion by some of the *amici curiae* that the general maritime law does not provide for punitive damages in this case can and should be quickly dismissed. The sole support provided for this novel legal theory are cases involving Jones Act seamen; in particular, the Fifth Circuit's decision in *McBride v. Estis Well Serv., L.L.C.*, 768 F.3d 382 (5th Cir. 2014)(*en banc*). *McBride* has no application to this case since *McBride* involved the question of the availability of punitive damages for seamen under their Jones Act and unseaworthiness claims. In answering no, a sharply divided *en banc* court held that the Jones Act, through its adoption of the F.E.L.A., preempted the field of seaman's remedies under both his Jones Act and unseaworthiness claims, including for punitive damages. But *McBride's* application is limited to cases involving seamen, and neither the Supreme Court nor any other controlling court have ever suggested otherwise.

Warren, as a non-seaman, has a clear right to recover punitive damages under the general maritime law. Punitive damages have long been an available remedy at common law for wanton, willful, or outrageous conduct. *Atlantic. Sounding Co. v. Townsend ("Townsend"),* 557 U.S. 404,

409 (2009); *Baker*, 554 U.S. at 491-92. American courts have likewise permitted punitive damages awards in appropriate cases since at least 1784. *Id.* at 410. The general rule that punitive damages were available at common law, extended to claims arising under federal maritime law at least as early as 1818. *Townsend*, 557 U.S. at 412, citing David W. Robertson, *Punitive Damages in American Maritime Law*, 28 J. Mar. L. & Comm. 73, 115 (1997) (Historically, punitive damages have been awarded "throughout maritime law, including property damage cases, personal injury cases, and cases involving shipowners' mistreatment of passengers and seamen."); see also Robert Force & Martin J. Norris, *The Law of Maritime Personal Injuries* § 11:8 (5th ed. 2004) (discussing the availability of nonpecuniary damages, including punitive damages, to non-seaman under the general maritime law).

C. Nowhere in *Baker* does the Court impose a cap on punitive damages in all maritime cases.

The argument by Teleflex (and its supporting *amici curiae*) that in *Baker* the Supreme Court imposed a "maximum 1:1 ratio" between punitive damages and compensatory damages in all maritime cases is legally incorrect. The Supreme Court has time and again, including in *Baker*, specifically refused to set a bright-line rule or a rigid mathematical formula to determine the acceptable scope of punitive damages.[1] Instead, the Court has repeatedly emphasized that the precise award in any case must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff.[2] As Judge Doherty noted in *In re Actos (Pioglitazone) Prod. Liab. Litig.*, No. 6:11-MD-2299, 2014 WL 5461859, at *29 (W.D. La. Oct. 27, 2014):

> Time after time, the Court has delivered the message to lower courts: the limit identified here is a suggestion only, and is offered for these facts alone, and lower courts considering this precedent must keep in mind that numerous factors affecting the degree of reprehensibility are relevant and all must be taken into account.

Contrary to Teleflex's representation, the Court in *Baker* did not sound a new tune. Instead, the Court made it clear that its imposition of a 1:1 ratio was relevant only to cases "with no earmarks of exceptional blameworthiness within the punishable spectrum (*cases like this one*, without intentional or malicious conduct, and without behavior driven primarily by desire for gain...) and cases (*again like this one*) without the modest economic harm or odds of detection that have opened the door to higher awards." *Id.* at 2634 (emphasis added).

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[1] See, e.g., *Baker*, 554 U.S. at 501, citing *Gore*, at 582, 116 S.Ct. 1589 ("we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula"); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1991) ("We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case.").

[2] See also, *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

Moreover, since the *Baker* decision, other courts have explicitly held that *Baker*'s 1:1 ratio was limited to the facts of that case, and that far greater ratios are permitted under the general maritime law. For example, in *McWilliams v. Exxon Mobil Corp.*[3], the Louisiana Third Circuit rejected the defendant's argument that *Baker* requires a 1:1 punitive to compensatory damage ratio. The court found "nothing in the *Exxon* case establishing a general rule limiting the jury's role in determining appropriate damages." *Id.* at 578. According to the appellate court, *Baker* "cannot be read as establishing a broad, general rule limiting punitive damage awards, primarily because nowhere in the opinion can such a rule be found." *Id.* at 579. "To the contrary, the United States Supreme Court expressly limits its holding to the facts presented." *Id.* at 579. Significantly, the Third Circuit continued: "Nothing in the *Exxon [Baker]* opinion can be read as overruling cases allowing higher punitive awards . . . . Quite the opposite, the Court seems to embrace an approach of **applying a variable limit** based on the tortfeasor's culpability." *Id.* at 579 (emphasis added).

Under the proper analysis, set forth by the U.S. Supreme Court and adopted by this court, the jury's award cannot be overturned.

D. The punitive damage award in this case satisfies the Supreme Court's test.

This Court has adopted the three "guideposts" set out by the United States Supreme Court in *BMW of North America, Inc. v. Gore*[4] as "appropriate factors" to consider when reviewing an award of punitive damages for excessiveness: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the harm and/or potential harm suffered by the plaintiff and the exemplary damages award; and (3) the difference between the exemplary damages awarded by the jury and the civil or criminal penalties authorized or imposed in comparable cases. *Mosing*, 830 So. 2d at 978 (citing *Gore*, 517 U.S. at 574). In conducting this analysis, courts should keep in mind the two purposes that punitive damages serve: punishment and deterrence. *Gore*, 517 U.S. at 568 ("Only when an award can fairly be categorized as "grossly excessive" in relation to [the interests of punishment and deterrence] does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment.")

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[3] *McWilliams v. Exxon Mobil Corp.*, 2012-1288 (La. App. 3 Cir. 4/3/13), 111 So. 3d 564, 578-79, *writ denied*, 2013-1402 (La. 11/8/13), 125 So. 3d 451.

[4] 517 U.S. 559, 116 S. Ct. 1589, 134 L.Ed.2d 809 (2009)

1. Degree of reprehensibility is the most important factor.

The United States Supreme Court has repeatedly stated that the degree of reprehensibility of the defendant's conduct is the most important factor to be considered.[5]

> [E]xemplary damages imposed on a defendant should reflect "the enormity of his offense." This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that "nonviolent crimes are less serious than crimes marked by violence or threat of violence." Similarly, "trickery and deceit" are more reprehensible than negligence …[6]

In determining the degree of reprehensibility, the Supreme Court in *Gore*, and again in *Campbell*, instructed lower courts to consider the following factors that it deemed to be associated with particularly reprehensible conduct; whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.[7] To this list, the *Baker* Court added two additional aggravating factors to be considered: profit motive ("actions taken or omitted in order to augment profit represents an enhanced degree of punishable culpability"[8]), and hard-to-detect wrongdoing ("Regardless of culpability, however, heavier punitive awards have been thought to justifiable when wrongdoing is hard to detect (increasing chances of getting away with it)"[9]).

Significantly, in those cases in which the Supreme Court determined that the punitive award was excessive, *none* of the factors weighed in favor of upholding the amount of the jury's punitive damages award. However, in the one case considered by the Court in which some of the factors existed, the Court let stand an award producing a 526:1 punitive damage to compensatory damage ratio.

In *BMW of North America, Inc. v. Gore*, the plaintiff (Dr. Gore) purchased a new BMW sports sedan from an authorized BMW dealer. Approximately nine months later, Dr. Gore was informed by a third party that the car had been repainted before he purchased it. Dr. Gore brought suit in state court in Alabama. The jury awarded Dr. Gore $4,000 in actual damages (representing the loss in value of the vehicle that resulted from the repainting), together with $4 million in

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[5] *Gore*, 517 U.S., at 575 ("[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct."); *Campbell*, 538 U.S., at 419 (same); *Baker*, 554 U.S., at 493 ("Under the umbrellas of punishment and its aim of deterrence, degrees of relative blameworthiness are apparent.").
[6] *Gore, 517 U.S.,* at 575.
[7] *Id.*, at 576–577; see also *Campbell*, 538 U.S. at 419.
[8] *Baker*, 554 U.S., at 471.
[9] *Baker*, 554 U.S., at 471.

punitive damages, after determining that BMW's policy of non-disclosure of such repairs to new cars constituted "gross, oppressive or malicious" fraud.

The U.S. Supreme Court found that the 500:1 ratio of compensatory damages to punitive damages was excessive because "none of the aggravating factors associated with particularly reprehensible conduct" were present: (1) the harm was purely economic; (2) the conduct evinced no indifference to or reckless disregard for the health and safety; and (3) "no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO*[10]."[11]

Campbell was a case involving bad faith, fraud, and infliction of emotional distress by an insurance company that improperly denied insurance coverage for an auto accident. In concluding that a 1:145 ratio of compensatory damages to punitive damages did not pass constitutional muster under the facts of that case, the Court noted: (1) the compensatory award was "substantial" (the Campbells were awarded $1 million for a year and a half of emotional distress, which the Court described as "complete compensation"); (2) "[t]he harm arose from a transaction in the economic realm, not from some physical assault or trauma; there were no physical injuries"; (3) the case involved "minor economic" damages that lasted for only 18 months; and (4) the compensatory damages award addressed the same emotional distress that the punitive damages award was designed to.[12]

In *Baker*, a supertanker grounded on a reef off the Alaskan coast spilling millions of gallons of crude oil into Prince William Sound. Claims for economic loss were brought by commercial fishermen and native Alaskans who were dependent on the resources of Prince William Sound for their livelihoods. In finding that a 1:1 punitive to compensatory damages ratio was appropriate under the facts of that case, the Court again found it significant that *none* of the reprehensibility factors existed. Instead, the case involved only property damage, not the loss of human life; the defendant Exxon's conduct was unintentional and inadvertent, not a conscious decision over more than a decade; there was no motive for financial gain; and the compensatory damages awarded were substantial at $507,000,000.

Contrast *Gore*, *Campbell*, and *Baker* with the Court's decision in *TXO Production Corp. v. Alliance Resources Corp.* In *TXO*, the jury awarded $10 million in punitive damages in a case

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[10] *TXO Production Corp. v. Alliance Resources Corp.*, 500 U.S. 443 (1993).
[11] *Gore*, 517 U.S., at 575-579.
[12] *Campbell*, 538 U.S., at 426.

involving mineral rights fraud where the actual harm sustained was only the $19,000 incurred by claimants in defending a declaratory judgment action. The Supreme Court found the existence of *some* of the reprehensibility factors justified the 526:1 compensatory to punitive damages ratio award: (a) the potential harm the defendant's conduct could have caused; (b) the bad faith of petitioner; (c) the fact that the scheme employed in the case was part of a larger pattern of fraud, trickery and deceit; and (d) TXO's considerable wealth.

It is also noteworthy that the Supreme Court has never addressed a case such as the present case, where the majority of the aggravating reprehensibility factors exist; including the most significant factor – conduct resulting in grave personal injury. As the Louisiana Third Circuit noted:

> The *BMW* and *State Farm/Campbell* aggravating factors for evaluating reprehensibility were satisfied: the harm here was physical, not economic, and of the worst kind, as it encompassed the violent taking of the life of a promising young man of twenty-two; the evidence before the jury showed tortious conduct evincing indifference and reckless disregard for the safety of others; the target of the conduct may not have been financial vulnerability, but the evidence clearly indicated a vulnerability through inexperience with regard to the users who buy this product. Further, given the thousands of complaints about oil loss, the decision not to warn was made repeatedly; and while the conduct may not equate with trickery, the decision not to warn was intentional for the purpose of avoiding "mass hysteria," which would of course reduce profits. Thus, the profit motive was established.
>
> Moreover, in *Exxon*, 554 U.S. 471, 128 S.Ct. 2605, the Court found that hard-to-detect wrongdoing, which is more reprehensible, subjects the more culpable tortfeasor to greater punishment. It is viewed as concealment and bad faith when a company has knowledge through its own testing that its product is dangerous and still withholds the knowledge from those who purchase the product and create the very wealth the defendant enjoys. *See id*.
>
> We find that the reprehensibility factor is fully realized in this case, unlike most of the seminal cases decided by the U.S. Supreme Court as outlined above. Accordingly, the reprehensibility factor in this case weighs heavily in favor of sustaining a high punitive damage award.[13]

In *TXO,* the Court affirmed a $10,000,000 punitive damage award in a situation with economic only damages totaling $19,000, resulting in a 526:1 punitive to compensatory damages ratio. It is inconceivable that the Supreme Court, if presented with the facts and circumstances of the present case, which includes nearly every one of its reprehensibility factors, would overturn an award resulting in a significantly lower ratio than that upheld in a case involving relatively minor, economic only damages.

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[13] *Warren v. Shelter Mut. Ins. Co*., 2015-354 (La. App. 3 Cir. 6/29/16), 196 So. 3d 776, 813–14, *reh'g denied* (Aug. 3, 2016), *writ granted*, 2016-1647 (La. 1/13/17).

2. **Defendants misstate the ratio analysis.**

A. The proper consideration is "actual or potential harm," not the compensatory damages awarded.

Teleflex asserts, incorrectly, that the amount of compensatory damages awarded is the mandatory denominator when considering the reasonableness of a punitive damage ratio. Instead, the Supreme Court has repeatedly stressed that the ratio analysis properly compares punitive damages to "actual *or potential* harm;" it is not limited to the compensatory damages actually awarded.[14] As the Court noted in *TXO*, consideration of the actual or potential harm, instead of limiting it to the compensatory award, furthers the punitive damages purpose of deterrence:

> [B]oth State Supreme Courts and this Court have eschewed an approach that concentrates entirely on the relationship between actual and punitive damages. It is appropriate to consider the magnitude of the potential harm that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred.
>
> . . .
>
> While petitioner stresses the shocking disparity between the punitive award and the compensatory award, that shock dissipates when one considers that potential loss..[15]

In *Baker*, the Supreme Court repeatedly cited, with approval, its prior decisions in *Cooper*[16], *Gore*, and *TXO*, all of which allowed consideration of actual *or potential* harm. This court has followed suit, noting that "potential harm" is one of the factors to consider in evaluating the excessiveness of a punitive damages award.[17]

As the appellate court noted in the present case, consideration of the potential harm would reduce the ratio of punitive to compensatory damages to 2.8:1 or less, which the court described as "a number within even *Exxon's* generalized upper limits, and well below the due process requirements discussed by the Supreme Court."[18]

B. A small compensatory award may also justify a higher ratio.

In reinforcing the underlying principle that punitive damages are designed to deter, the Supreme Court has instructed that a higher ratio may also be justified when, as in the present case,

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[14] *Gore*, 517 U.S., at 582 ("[W]e have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award"); *Campbell*, 538 U.S. at 424 ("Turning to the second *Gore* guidepost, we have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award.").

[15] *TXO*, 500 U.S., at 460, 462.

[16] *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001)

[17] See *Mosing v. Domas*, 2002-0012, p. 8 (La. 10/15/02); 830 So. 2d 967, 974 (noting that one of the factors to consider is "the extent of harm or **potential harm**") (emphasis added); *Id*., 02-12 at p. 16, 830 So. 2d at 978 (noting that one of the Gore factors is "the disparity between the harm and/or **potential harm** suffered by the plaintiff and the exemplary damages award") (emphasis added); *Id*., 02-12 at 21, 830 So. 2d at 981 ("An award of exemplary damages … must be viewed in its unique context, in light of the facts of the case and with reference to the actual damages awarded and the **potential harm** that could have resulted from the defendant's conduct.") (emphasis added).

[18] *Warren v. Shelter Mut. Ins. Co.*, 2015-354 (La. App. 3 Cir. 6/29/16), 196 So.3d 776, 816.

the conduct has resulted in a low compensatory award. See *Campbell*, 538 U.S. at 425, citing *Gore* at 582 ("because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may comport with due process where 'a particularly egregious act has resulted in only a small amount of economic damages.'")

It is difficult to imagine a lower compensatory award for the harm caused than in the present scenario. Derek's death was violent; the propeller blades cut him deeply from his beltline to his head.[19] However, since Derek died fairly quickly, the jury awarded only $100,000 for his survival damages. In addition, because Derek was estranged from his father, Mr. Warren, the jury awarded only $25,000 for his wrongful death claim, for a total award of only $125,000.

Teleflex asks this court to limit its punishment to the small amount awarded to Derek's estranged father. In effect, Teleflex's position produces two perverse and unacceptable results. First, it would reward Teleflex for the perceived shortcomings of Mr. Warren. This assertion, for present purposes, is simply irrelevant, and completely disregards the purposes of punitive damages: punishment and deterrence. Moreover, as noted above, proper consideration of the actual or potential harm caused by Teleflex's reprehensible conduct would produce a compensatory award similar in size to the punitive award. In effect, to provide Teleflex with the relief it seeks would be to reward Teleflex for killing Derek, instead of seriously injuring him which, as the appellate court noted, would have warranted a much larger compensatory damage award.

C. **The wealth of the defendant is an important consideration.**

Teleflex's (and its amici) suggestion that the wealth of the defendant should be disregarded is also legally unsupportable. Instead, it is well-settled, under both federal and Louisiana Law, that "the defendant's economic wealth" is an important consideration in awarding punitive damages. *See Mosing*, 830 So. 2d at 978. This is "obvious," according to this Court: "What may be awesome punishment for an impecunious individual defendant [may be] wholly insufficient to influence the behavior of a prosperous corporation." *Id.* at 978-79; see also, *Deters v. Equifax Credit Info. Servs., Inc*., 202 F.3d 1262 (10th Cir. 2000) ("In assessing the reasonableness of punitive damages, the Court of Appeals must consider the purposes of such a remedy, namely to punish and deter; in this respect, the wealth and size of the defendant are relevant considerations."); *Ambassador Hotel Co. v. Wei-Chuan Inv.,* 191 F.3d 459 (9th Cir. 1999)

[19] *Warren*, 196 So. 3d at 814.

("Because the primary purpose of an award of punitive damages is to deter future misconduct by the defendant, the court must consider the wealth of the particular defendant in every case.").

When, as here, the defendant has been found to have engaged in conduct of a high degree of reprehensibility, resulting in the violent loss of human life, all in order to generate millions of dollars in sales, an award large enough to sufficiently punish in order to effectively deter such conduct is unquestionably warranted, if not absolutely required. Further, the punitive damage award in this case represents just 1/174 of the Teleflex's worth.[20] Imposing a 1:1 ratio cap on the punitive damages in this case based on low compensatory damages awarded to Derek's estranged father, as argued by Defendants, would be so negligible under the financial realities of Teleflex as to be easily absorbed and thus would have the perverse effect of *reinforcing* the wrongdoing, rather than deterring it, by merely defining an acceptable cost of doing business.

CONCLUSION

Teleflex (and its supporters) *have not provided any empirical evidence* that allowing punitive damages in this case will harm the maritime industry in Louisiana, as they appear to suggest. To the contrary, reason suggests that the jury's award in this particular case will deter Teleflex and other manufacturers from placing dangerous products into the stream of commerce in Louisiana, will boost the economy of this State by reducing the risks to its workers, will reduce the costs to the State of those uninsured citizens injured by defective products, and will save the lives of Louisiana citizens. In short, the jury's award in this case was proportional to the extreme level of harm (death), Teleflex's knowledge of the risk of serious injury and death for more than a decade, the manufacturer's financial motive for failing to warn of a known risk (i.e., to increase its market share and become a leader in its industry), and its net worth (over $4 billion).

The court of appeal's conclusion that there is no "maximum 1:1 ratio" of punitive to compensatory damages in all cases is strongly supported by the wording of *Baker*, the holdings of other U.S. Supreme Court decisions cited with approval by *Baker*, and more importantly, the case-specific facts of this case. None of the cases cited by Teleflex (or the supporting *amicus curiae* briefs) involve the same fact pattern involved in this case, and none state that a court can *never* award more than a 1:1 ratio in maritime cases.

If the important goal of deterring Teleflex and similar manufacturers' harmful conduct is to be successful, the jury's verdict must be upheld. If it is reduced to some minimal amount,

[20] *Warren*, 196 So. 3d at 817.

Teleflex and its competitors will simply regard punitive damages as just another cost of doing business.

For these reasons, the Louisiana Association for Justice and the American Association for Justice respectfully request that this Court affirm the lower courts' judgments.

Respectfully submitted,

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