No. 07-

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION,
Petitioner,

v.

JOSEPH GREFER ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Louisiana Court of Appeal, Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

GLEN M. PILIE
RONALD J. SHOLES
LOUIS C. LACOUR, JR.
MARTIN A. STERN
ADAMS AND REESE LLP
4500 One Shell Square
New Orleans, Louisiana
70139
(504) 581-3234

WALTER DELLINGER
(*Counsel of Record*)
MATTHEW M. SHORS
KATHRYN E. TARBERT*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

**Admitted only in Wisconsin; supervised by principals at the firm*

Attorneys for Petitioner

QUESTIONS PRESENTED

Although a jury held ExxonMobil liable for purely economic harm to a $1.5 million piece of industrial property, it awarded $1 billion in punitive damages based entirely on the threat of physical harm to nonparties. The Court of Appeal reduced that punitive damages award to $112 million. This Court granted ExxonMobil's petition for a writ of certiorari, vacated the Court of Appeal's judgment, and remanded the case for reconsideration in light of *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007). The Court of Appeal "st[oo]d by its initial decree." The questions presented are as follows:

1. Whether the Court of Appeal on remand denied due process when it continued to punish ExxonMobil for harm to nonparties, left intact a punitive damages award without finding that ExxonMobil's conduct was reprehensible as it affected plaintiffs, and held that the jury could "consider the harm suffered by both parties and non-parties regardless of the type or similarity of harm suffered."

2. Whether, contrary to the decisions of other federal and state appellate courts, a court may remedy a concededly tainted punitive damages trial by affirming the maximum punitive damages award due process permits, rather than by ordering a new trial.

3. Whether due process permits punitive damages twice the amount of compensatory damages in a case of economic injury when compensatory damages are $56 million and plaintiffs' actual harm is no greater than $1.5 million.

PARTIES TO THE PROCEEDING

Petitioner is Exxon Mobil Corporation, one of two defendants-appellants below. Intracoastal Tubular Services, Inc. was the other defendant-appellant below and is a respondent under this Court's Rule 12.6. Other parties named as defendants in the trial court – none of whom were parties on appeal – were Alpha Technical Services, Inc.; Chevron, U.S.A., Inc.; Conoco, Inc.; Homeco Inc.; HuntPetroleum Corp.; Hassie Hunt Exploration Co.; Mobil Exploration & Producing Southeast, Inc.; Phillips Oil Co.; Sexton Oil & Mineral Corp.; Shell Offshore, Inc.; Shell Oil Co.; Shell Western E&P, Inc.; System Fuels, Inc.; Texaco, Inc.; Tubular Corp; OFS, Inc.; and Oilfield Testers, Inc.

Plaintiffs-appellees below, Joseph Grefer, Camille Grefer, Rose Marie Grefer Hassi, and Henry Grefer, are respondents under this Court's Rule 12.6.

RULE 29.6 DISCLOSURE

Exxon Mobil Corporation has no parent corporation and no person or entity owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES

Page

TABLE OF AUTHORITIES

Page

STATUTES

TABLE OF AUTHORITIES

Page

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

PETITION FOR A WRIT OF CERTIORARI

Petitioner Exxon Mobil Corporation ("ExxonMobil") respectfully petitions for a writ of certiorari to review the judgment of the Louisiana Court of Appeal, Fourth Circuit, in this case.

OPINIONS BELOW

The opinion of the Court of Appeal on remand is reported at 965 So. 2d 511 and is reprinted in the Appendix to the Petition ("App.") at 1a-35a. The first opinion of the Louisiana Court of Appeal is reported at 901 So. 2d 1117 and is reprinted at 36a-107a. The final judgment of the trial court is unreported and is reprinted at App. 62a-66a.

JURISDICTION

The Court of Appeal issued its opinion on August 8, 2007. App. 3a. The Louisiana Supreme Court denied ExxonMobil's timely petition for certiorari review on November 16, 2007. Justices Kimball and Victory would have granted the application. *Id.* at 123a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

In *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007), this Court held that "the Constitution's Due Process Clause forbids a State to use a punitive

damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, *i.e.*, . . . those who are, essentially, strangers to the litigation." *Id.* at 1063. This Court granted certiorari in this case, vacated the judgment affirming a $112 million award of punitive damages, and directed the Court of Appeal to reconsider its decision in light of *Williams*. App. 122a.

In response to this mandate, the Court of Appeal reprinted a large section of its original opinion and insisted that it had anticipated *Williams*, despite having affirmed jury instructions that predicated punitive damages on a claimed risk to public health, *see* App. 9a-12a, and having rejected arguments that ExxonMobil could not be punished solely for the potential harm its conduct allegedly posed to nonparty employees, *id.* at 114a. The Court of Appeal determined that ExxonMobil had acted reprehensibly based solely upon the physical harm allegedly suffered by nonparties to the litigation and held that the jury could "consider the harm suffered by both parties and non-parties regardless of the type or similarity of harm suffered as a result of defendant's conduct." App. 33a. The court's clear disregard of this Court's precedents and its order to reconsider in light of *Williams* warrants review.

In addition, the decision below exacerbates a split among federal and state appellate courts as to whether a court may remedy a concededly tainted punitive damages trial by affirming the maximum substantive punitive damages award the Constitution permits rather than by granting a new trial. Although the Court of Appeal recognized that the trial court erred in "allow[ing] the plaintiffs to argue

and present substantial evidence . . . of the potential and/or alleged actual harm" to the public, the court refused to grant ExxonMobil's request for a new trial. App. 26a. Instead, the court reduced the punitive damages to the maximum award it believed constitutionally available as a matter of due process. That error provides this Court the opportunity to take up the unfinished business of *Williams* and *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and resolve a split among federal and state courts as to whether, when an award of punitive damages rests upon improper considerations, due process permits a court to remedy that error by awarding the maximum amount of damages due process permits.

The decision below also exacerbates a divide in the lower courts over the amount of punitive damages that may constitutionally be awarded where compensatory damages are already substantial. The court here awarded $112 million in punitive damages on top of the $56 million plaintiffs received to compensate for and remediate the damage to their $1.5 million piece of property. That award was unconstitutional under this Court's decision in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), which teaches that due process does not permit the award of any punitive damages when compensatory damages are sufficient to punish and deter and that the highest permissible ratio in a case of substantial compensatory damages is 1:1.

A. Factual Background

1. Plaintiffs jointly own a 33-acre tract of industrial property in Harvey, Louisiana. *See* App. 46a &

n.8. That tract of land is worth at most $1.5 million. *Id.* at 4a, 46a, 66a.

For decades, plaintiffs leased their land to ITCO, an oil and gas service company. App. 41a. ITCO's services included the storage, handling, transportation, inspection, cleaning, and threading of drill pipes used in oil production. *Id.* Several oil companies, including ExxonMobil, routinely sent their pipes to ITCO for cleaning. *Id.* As part of cleaning the pipes, ITCO sometimes removed built-up "scale" from inside some of the pipes. *Id.* at 36a. Scale is caused by mineral salts, which precipitate as oil and gas flow through pipes from underground reservoirs to the surface. *Id.* at 48a-49a. Some of the scale involved here contained radium sulfate, and over several decades, the pipe cleaning activities led to the accumulation of naturally occurring radioactive material ("NORM") on plaintiffs' property. *See* App. 36a.

2. Although ExxonMobil and other oil companies sent pipes to ITCO for cleaning beginning in the early 1950s, it was not until 1986 that ExxonMobil learned that some of the scale in the pipes contained low levels of NORM. App. 43a-44a. After investigating that discovery, ExxonMobil prepared a videotape and a letter advising pipe-cleaning contractors about the presence of NORM in its pipes and the risks associated with it. Within nine months of the discovery, ExxonMobil notified ITCO and stopped shipping pipes to it for cleaning. *Id.* at 44a. ITCO continued to store contaminated pipes on the property until 1992, when it ceased all operations on plaintiffs' land. *Id.* at 4a, 24a, 46a.

B. Proceedings Below

1. In August 1997, plaintiffs sued ExxonMobil, other oil companies, other pipe-cleaning companies, and ITCO itself, claiming that their property had been damaged as a result of the cleaning and storage of pipes on the property. App. 47a-49a. Plaintiffs asserted claims for negligence, strict liability, absolute liability, nuisance, fraud, and breach of contract. *Id.* at 49a.

Plaintiffs did not assert any personal injury claims or seek any medical monitoring relief, as they do not live near or make personal use of the property. Rather, plaintiffs sought damages for loss of use and remediation of the property and punitive damages. App. 49a. Only the claims against ExxonMobil and ITCO went to trial.

2. During a five-week trial in April and May of 2001, plaintiffs urged the jury to award massive punitive damages against ExxonMobil, based *not* on harm to plaintiffs' property, but instead on the risks of physical harm allegedly posed to nonparties, including ITCO employees and the public.

This campaign to punish ExxonMobil for potential physical injury to nonparties pervaded the trial. In his opening statement, plaintiffs' counsel described NORM as "a very, very, very fine powder" that will "blow all over the place," R.32:17,[1] "travel towards the houses," R.33:19, and infiltrate churches and schools, R.33:200; R.34:38. Plaintiffs showed the

---

[1] Citations to the trial court transcript are to the record filed with the Court of Appeal and take the form "R.[volume]:[page]."

jury a video of schoolchildren getting on and off a bus near their property, implying that the children had been exposed to harmful levels of radiation. R.33:191-99. Plaintiffs suggested that radium from plaintiffs' property would enter the "food chain," R.29:131, and would cause cancer and birth defects, R.29:137-41; R.32:131-36. Plaintiffs compared the conduct in this case to the *Exxon Valdez* oil spill and urged the jury to bring ExxonMobil "to an altar" again. R.56:43. In closing, plaintiffs argued that ExxonMobil left ITCO employees and the public "unprotected" by failing to tell them about risks posed by NORM. R.56:42.

Although this evidence had *nothing* to do with the economic losses alleged by plaintiffs, they claimed it showed that NORM "threatened" ITCO employees and the public and thereby asked the jury to award massive punitive damages against ExxonMobil. R.33:193; *see also* R.29:108-09 (stating that the evidence went to "the quantum of punitive damages"). ExxonMobil repeatedly objected to this inflammatory and irrelevant evidence. The trial court overruled those objections. *See*, *e.g.*, R.29:114, 138-41; R.33:200; R.34:38.

3. Again over ExxonMobil's objection, the trial court instructed the jury that it could award punitive damages against ExxonMobil if the company was "wanton or reckless in [its] disregard for public safety," meaning that ExxonMobil knew that it was "highly probable that harm to the public would result from [its] conduct." App. 10a. The court refused to instruct the jury, as ExxonMobil requested, that it "[could] only award exemplary damages" if ExxonMobil had engaged in wanton and reckless conduct

that damaged the plaintiffs. *See id.* at 9a-11a (quoting Exxon's proposed instructions). Instead, the trial court described harm to the plaintiffs as "[a]nother factor" the jury could consider in determining the amount of the award. *Id.* at 11a.

4. During deliberations, the jury foreperson "sent a note to the trial court inquiring as to whether any of the punitive damage award would go to compensate people in the community." App. 99a n.26. Although the court responded that the entire punitive damages award would go to plaintiffs, the jury awarded $1 billion in punitive damages against ExxonMobil.[2] App. 5a. The jury also awarded $56 million in remediation costs, which plaintiffs are not required to expend on their $1.5 million property, and $145,000 in general damages. *Id.* The trial court entered judgment against ExxonMobil for a staggering total of $1.056 billion, plus interest and costs.

5. ExxonMobil appealed. On March 31, 2005, the Fourth Circuit Court of Appeal affirmed the trial court's judgment. It rejected ExxonMobil's state-law arguments that would have reduced the compensatory damages award. *See* App. 52a-75a.

---

[2] That massive punitive damages award was returned despite the fact that Article 2315.3 of the Louisiana Civil Code, the state law authorizing punitive damages, did not exist until September 1984, almost 30 years after ITCO started cleaning pipes for ExxonMobil, and was repealed in April 1996, one and one-half years before this lawsuit was filed. Because ExxonMobil stopped shipping pipes to ITCO by March 1987, App. 18a, the statute was only in effect for less than three years out of the decades of conduct at issue in this case.

In reviewing the constitutionality of the punitive damages verdict, the Court of Appeal purported to follow *BMW*, 517 U.S. 559, and *State Farm*, 538 U.S. 408. The court determined that ExxonMobil's conduct was reprehensible, not based on the "strictly economic harm" suffered by plaintiffs, but based on ExxonMobil's "nine-month delay in notifying *ITCO* . . . of the dangers posed from handling NORM contaminated equipment." App. 94a (emphasis added). The Court of Appeal described ITCO, a co-defendant in the original action, as "the target of the conduct," and found that ExxonMobil's conduct "involve[d] an element of deceit" because the company withheld from ITCO information regarding the dangers of NORM. *Id.* at 96a.

The Court of Appeal "[n]ext . . . consider[ed] . . . the disparity between" the amount of punitive damages awarded and plaintiffs' actual harm. App. 96a. At this point, the court recognized that the jury's deliberations had been tainted by plaintiffs' repeated references to alleged health risks to the public:

> Although the plaintiffs claimed only property damage, and no physical harm, the trial court allowed the plaintiffs to argue and present substantial evidence, over Exxon's objections, of the potential and/or alleged actual harm to other persons who were not parties to this suit and whose claims were not before the jury.

App. 98a. The court recognized that such evidence "was irrelevant and, more than likely, confused the jury, contributing to its exorbitant punitive damage award," which was "neither reasonable nor propor-

tionate to the amount of harm to the plaintiffs and to the general damages recovered." *Id.* at 99a-100a.[3]

Nevertheless, the Court of Appeal refused to order a new trial to remedy that error. Instead, and in the face of an admittedly "substantial" compensatory award, App. 98a, the court "reduce[d]" the jury's award to "twice the general damage award," which the court decided was the "highest figure" that could be awarded consistent with due process. *Id.* at 98a, 115a. The Court thus affirmed a punitive damages award of $112 million dollars – 75 times the value of the plaintiffs' property and twice the $56 million in compensatory damages. App. 115a.

6. ExxonMobil petitioned for rehearing, arguing that the court erred in affirming the award of punitive damages because "harm to third parties cannot be punished." Pet. Reh'g, *Grefer v. Alpha Technical*, No. 2002-CA-1237 8. The Court of Appeals rejected this argument as "an incorrect and exceedingly narrow reading of" this Court's decision in *State Farm*. App. 109a.

7. After unsuccessfully seeking review in the Louisiana Supreme Court, ExxonMobil petitioned this Court for a writ of certiorari. The Court granted the writ, vacated the judgment, and remanded for reconsideration of *Williams*, 127 S. Ct. 1057. App. 117a. The Court of Appeal instead "st[oo]d by" the obvious errors in its initial decree. *Id.* at 33a. First, the court concluded that the trial court "set forth a correct statement of the law" when, over ExxonMo-

[3] The court did not reconcile this holding with its reliance on the harm to ITCO employees as a justification for the punitive damages verdict. *See* App. 94a-96a, 99a.

bil's objection, it instructed the jury that it could award punitive damages for alleged risks to public health and safety. App. 10a, 12a. Next, the court reprinted approximately 7 pages of its original decision that focused on the harm to ITCO employees, claimed that its original decision "t[ook] into account all of the objections and concerns raised by Exxon . . . in light of [*Williams*]," and insisted that potential harm to nonparties could be considered regardless whether plaintiffs suffered the same kind of harm. App. 32a; *see id.* at 31a-33a. The court refused to order a new trial to remedy the introduction of the admittedly irrelevant evidence of alleged harm to the public. App. 27a. And the court again affirmed the $112 million punitive damages award. *Id.* at 35a.

REASONS FOR GRANTING THE PETITION

The jury awarded $1 billion in punitive damages based not on plaintiffs' solely economic injury but on the potential physical harm ExxonMobil's conduct allegedly posed to numerous individuals not before the court – qualitatively different harms against which ExxonMobil had no way to defend. The Court of Appeal compounded that error by affirming $112 million in punitive damages despite acknowledging the unfairness of the proceedings. This petition raises three important issues warranting review:

First, this case offers the Court the opportunity to confirm, for those courts that have been unwilling to listen, that the Court meant what it said in *Williams*: Due process does not allow a jury to punish a defendant for harm or potential harm that its conduct has allegedly imposed upon nonparties to the litigation. This case also gives the Court the oppor-

tunity to eliminate any doubt that a nonparty's dissimilar harm may not be the basis for finding that a defendant's conduct toward the plaintiffs was reprehensible and deserving of punishment.

Second, even if the Court of Appeal otherwise applied the Court's punitive damages precedents correctly, this case offers the Court the opportunity to consider whether due process permits a reviewing court to remedy a faulty instruction or jury's improper consideration of evidence of nonparty harm with a reduction of the punitive damages award to the maximum amount the Constitution permits, rather than a new trial. There is a clear split in authority in the lower courts regarding whether such a reduction is a permissible remedy when the reviewing court cannot determine what portion of the award has been tainted by improper considerations. This Court granted review of that question in *BMW*, 517 U.S. 559, but did not resolve it there or in *Williams*, *see* 127 S. Ct. at 1065. This case presents an ideal vehicle for resolving the conflict.

Third, this case also provides a vehicle for the Court to consider the maximum punitive damages award (if any) that is permissible where compensatory damages are undeniably "substantial." *State Farm* holds that, in cases of "substantial" compensatory damages, punitive damages in an amount "equal to compensatory damages" may be the maximum permissible under the Constitution. 538 U.S. at 425. This case provides a striking example of the confusion in the lower courts over when that 1:1 ratio of punitive to compensatory damages is required. This Court should grant the petition to provide additional guidance on that issue.

I. THE JUDGMENT BELOW DEFIES THIS COURT'S PRECEDENT BY AWARDING PUNITIVE DAMAGES FOR HARM TO NONPARTIES.

Plaintiffs sued ExxonMobil solely to recover the costs of property damage. They did not allege or prove that ExxonMobil exposed them to physical harm. And they did not seek personal injury damages or medical monitoring. But the trial nevertheless became a referendum on whether ExxonMobil should be punished for the alleged risk of *health* problems it may have imposed on individuals "not before the court." *Williams*, 127 S. Ct. at 1060. The Court of Appeal held that the trial comported with *Williams*. App. 13a. The Court of Appeal is wrong.

As this Court explained in *Williams*, "the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, *i.e.*, . . . strangers to the litigation." 127 S. Ct. at 1063. The Court could not have been clearer that the "*potential* harm" caused by the defendant's conduct is relevant only to the extent "that the potential harm at issue [i]s harm potentially caused *the plaintiff*." *Id.* (emphasis in original). This is because "the Due Process Clause prohibits a State from punishing an individual without first providing that individual with 'an opportunity to present every available defense.'" *Williams*, 127 S. Ct. at 1063 (quoting *Lindsey v. Normet*, 405 U.S. 56 (1972)). A "defendant threatened with punishment for injuring a nonparty victim has no opportunity to defend against th[at] charge," such as by

offering specific evidence to demonstrate that the nonparty victim was not injured. *Id.*

Accordingly, the Court in *Williams* stressed that "it is constitutionally important for a court to provide assurance . . . . that juries are not asking the wrong question, *i.e.*, seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers." *Id.* at 1064. States must "avoid procedure that unnecessarily deprives juries of proper legal guidance," *id.*, and offer "protection" where there is a "significant [risk]" that the jury might "seek to punish the defendant for having caused injury to others," *id.* at 1065 (emphasis omitted).

The risk of improper punishment here was overwhelming. Plaintiffs urged, and the jury returned, a punitive damages award of $1 billion based on everything *except* economic harm to plaintiffs' property. "From their opening statements onward" and continuing "throughout the litigation," *State Farm*, 538 U.S. at 420-21, plaintiffs urged the jury to award punishment based on the threat of harm NORM allegedly posed to the community at large, as well as risks allegedly posed to employees of ITCO and other pipe-cleaning contractors.

The trial court did nothing to guard against the obvious fact that the jury might punish ExxonMobil for that nonparty harm. On the contrary, the court invited the jury to impose punishment for "probable . . . harm to the public." App. 10a. That turns *Williams* on its head, "add[ing] a near standardless dimension to the punitive damages equation" that left "the jury . . . to speculate" as to harm ExxonMobil's conduct may have caused an unknown number of

persons. *Williams*, 127 S. Ct. at 1063. ExxonMobil objected to the court's instruction, just as it had objected to the evidence of alleged harm to nonparties that the instruction invited the jury to consider. But the trial court admitted the evidence and instructed the jury over ExxonMobil's objections.

The Court of Appeal recognized that the trial court erred in allowing the jury to consider "irrelevant" and "confus[ing]" evidence "of the potential and/or alleged actual harm to [nonparties]." App. 26a. But the court did not go far enough. Instead, it insisted that "Exxon should be punished for its reprehensible conduct" toward ITCO employees. App. 32a; *see* 21a-24a (identifying as "reprehensible" only conduct that purportedly harmed ITCO employees).[4]

Where the Court of Appeals erred – and erred badly – was in refusing to acknowledge that punishing ExxonMobil for alleged harm to an ITCO employee is no different from punishing ExxonMobil for harm to a neighbor. If anything, it is worse: After all, nonparties to this case had already then filed their own class action lawsuits against ExxonMobil, purporting to represent thousands of putative class

[4] Although plaintiffs and the court relied on ExxonMobil's nine-month delay in announcing the presence of NORM to ITCO, the NORM was not a threat to plaintiffs' health or safety, and the decades of NORM deposited on the property already required, before 1986, whatever remediation was ultimately necessary. Given the "potential for causing mass hysteria in the community if the disclosure [of NORM] was made in less than a careful manner," App. 104a, any decision to allow minimal additional contamination while ExxonMobil determined the proper way to alert ITCO can in no way be deemed reckless, much less reprehensible, toward plaintiffs.

members, including pipe-cleaning employees, affected by the pipes on the plaintiffs' property. See, e.g., In re Harvey TERM Litigation, No. 01-8708 (La. Dist. Ct. Parish of Orleans, Div. D). The award thus makes concrete the risk of duplicative punishment the Court guarded against in *State Farm*, 538 U.S. at 423, and *Williams*, 127 S. Ct. at 1064-1065. Whereas ExxonMobil will be able "to defend itself against the [employees'] charge[s]" in the separate suits by establishing that its actions did not harm workers, it had no such opportunity in plaintiffs' case. See *Williams*, 127 S. Ct. at 1063.[5]

Thus, although *Williams* requires a "court to provide assurance that the jury will ask the right question, not the wrong one," 127 S. Ct. at 1064, the Court of Appeal affirmed instructions that awarded damages on the basis of "public . . . risk." App. 10a. And although *Williams* limited the relevant "potential harm" to "harm potentially caused *the plaintiff*,"

---

[5] Although the Court of Appeal attempted to justify its focus on the harm to ITCO employees as "done simply to show reprehensibility," App. 32a, and not to provide a basis for punishment, that claim is belied by the court's own analysis. *See* App. 109a (rejecting as an "incorrect and exceedingly narrow reading" of *State Farm* ExxonMobil's arguments that its conduct toward ITCO employees could not serve as the basis for a punitive damages award); *id.* at 24a (following this Court's instruction to determine if "the harm" for which the defendant is being punished "was the result of . . . deceit," *State Farm*, 538 U.S. at 419, by determining that the "danger" posed to the ITCO workers involved "an element of deceit"); *id.* at 22a (describing ITCO as the "target" of the punishable misconduct, *see State Farm* 538 U.S. at 419); *id.* at 24a (deeming reprehensible Exxon's failure to warn of the "direct danger to the physical health and safety of [ITCO] workers" — a warning completely unrelated to plaintiffs' harm).

127 S. Ct. at 1063 (initial emphasis omitted), the Court of Appeal instead focused on the reprehensibility of ExxonMobil's actions toward, and harm done to, the ITCO employees. The Court of Appeal in all respects failed to "take[] into account . . . the objections and concerns raised by Exxon . . . in light of [*Williams*]," either in its original opinion or on remand. *Id.* at 32a.[6]

Indeed, the constitutional violation in this case runs far deeper than in *Williams*, where the claimed harm to nonparties at least mirrored, and therefore "ha[d] a nexus to[,] the specific harm suffered by the plaintiff." *State Farm*, 538 U.S. at 422. Here, by

---

[6] Unfortunately, the Court of Appeal it is not alone in its wholesale refusal to follow *Williams* – although it is the most obvious. *See*, *e.g.*, *State ex rel. Chemtall Inc. v. Madden*, 655 S.E.2d 161, 2007 WL 4098937 (W. Va. Nov. 15, 2007) (affirming decision to try and award punitive damages for a class before the class was defined or certified); id. at *7 (Benjamin, J., dissenting in part) (explaining that a court that determines punitive damages before it selects its plaintiffs clearly contravenes *Williams*' mandate, as it prevents the defendant "from presenting every available defense" against the charges against it); *Williams v. Philip Morris*, No. CC 9705-03957; CA A106791; SC S051805, 2008 WL 256614 (Or. Jan. 31, 2008) (refusing, on remand, to offer the "protection" against the "significant [risk]" that the jury might "seek[] to punish the defendant for having caused injury to others" because, "even assuming that [defendant's proposed limiting instruction] . . . clearly and correctly articulated the standard required by due process," the instruction "contained other parts that did not state the [state] law correctly"). These errors are indefensible and inexplicable under *Williams*, and this case provides the Court with the perfect opportunity to grant certiorari and make clear that the lower courts may not ignore its precedent at will.

contrast, there is a complete disconnect between the plaintiffs' solely economic harm and the potential physical injuries allegedly caused to ITCO employees and the public.

In *State Farm*, this Court held that, "to have relevance in the calculation of punitive damages," evidence of a defendant's conduct toward nonparties "need not be identical," 538 U.S. at 423, but it "must be closely related." *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 797 (8th Cir. 2004). This case presents the Court the opportunity to hold that the same is true in the context of nonparty harm: Where a defendant's conduct cannot be judged reprehensible by virtue of harm it caused or potentially caused any party to the litigation, due process does not permit a plaintiff to predicate his bid for punishment solely upon dissimilar harm that may befall strangers to the litigation.

As noted above, the Court made clear in *Williams* that the "potential harm" that may be considered for purposes of determining the reasonableness of a punitive damages award is "harm potentially caused the plaintiff" because "a defendant threatened with punishment for injuring a nonparty victim has no opportunity to defend against the charge." 127 S. Ct. at 1063. A defendant faces that unconstitutional deprivation of process when confronted with an allegation that its conduct was reprehensible – "the most important indicium of the reasonableness of a punitive damages award," *BMW*, 517 U.S. at 575 – because of dissimilar harm to a nonparty. The decision to permit a plaintiff to argue reprehensibility for harms he did not suffer forces the defendant to anticipate and defend against a universe of injuries

when it has only been "charged" with one. *Cf. United Food & Commercial Workers Local 100A v. John Hofmeister & Son, Inc.*, 950 F.2d 1340, 1344-1345 (7th Cir. 1991). By the same token, allowing a plaintiff to rely upon potential, dissimilar harm that he has not suffered also makes intolerably likely the "possibility of multiple punitive damages awards for the same conduct." *State Farm*, 538 U.S. at 423.

Unlike most cases, therefore, the Court in this case may decide whether any punitive damages are constitutionally available because the allegedly reprehensible conduct purportedly harmed nonparties in a qualitatively distinct way from plaintiffs' claimed injuries. Because plaintiffs failed to demonstrate, and the Court of Appeal never found, that ExxonMobil's conduct toward them was in any way reprehensible, this Court should grant certiorari and hold that the court erred in awarding any punitive damages whatsoever.[7]

II. THE LOUISIANA COURT OF APPEAL'S DECISION TO REDUCE THE PUNITIVE DAMAGES AWARD RATHER THAN ORDER A NEW TRIAL DEEPENS A CONFLICT AMONG THE LOWER COURTS.

In the alternative, even assuming that the Court of Appeals properly applied *State Farm* and *Williams* and was warranted in awarding punitive damages, this Court should grant the petition for certiorari to resolve another critical issue: whether a reviewing court may cure a procedural infirmity,

---

[7] Given the Court of Appeal's manifest failure to apply *Williams*, the Court may wish to consider summary reversal.

such as a jury's consideration of improper evidence, by reducing a jury's punitive damages award to the maximum amount allowed by due process rather than by granting a new trial. The question presented by this case was accepted for review, but not ultimately addressed, by this Court in *BMW*.[8] 517 U.S. at 586. And the issue has arisen repeatedly since the Court's decision in that case, provoking a conflict among the lower courts that was neither addressed nor resolved by *Williams*, where the Court stated that application of the correct standard on remand "may lead to the need for a new trial, or a change in the level of the punitive damages award," but did not clarify under what circumstances a new trial would be necessary. 127 S. Ct. 1065.

---

[8] BMW asked this Court to address "[w]hether the Alabama Supreme Court, having found that the jury's $4,000,000 punitive damages verdict unconstitutionally punished petitioner for hundreds of transactions that occurred entirely outside of Alabama, was obligated to provide a meaningful remedy for that constitutional violation." Pet. for a Writ of Certiorari at i, *BMW v. N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (No. 94-896), 1994 WL 16011916 (Nov. 17, 1994) (first question presented). The Court granted review on that question, 513 U.S. 1125 (1995), and BMW argued that the Court could provide a "meaningful remedy" for the constitutional violation in one of two ways: It could either order a new trial on punitive damages, or it could order a remittitur that removed all of the extraterritorial punishment, the amount of which was clear from the precise way in which the jury had calculated punitive damages. Petr's Br. 23-26, *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (No. 94-896), 1995 WL 126508 (Mar. 23, 1995). The Court left the "appropriate remedy" for the constitutional error to "be addressed by the state court in the first instance," *BMW*, 517 U.S. at 586, thereby leaving for that court the issue of remedy in that particular case.

A. There Is A Conflict In The Lower Courts Over The Proper Remedy When A Punitive Damages Award Is Tainted By Improper Evidence Or Instructional Error.

The decision below exacerbates a conflict in the lower courts concerning the appropriate remedy in situations where, as here, a procedural violation tainted the fairness of the trial proceedings.

1. A number of courts, both before and after *Williams*, have held that a reviewing court must order a new trial when a jury's award of punitive damages is based either on improper evidence or instructions. For example, in *White v. Ford Motor Co.*, 312 F.3d 998 (9th Cir. 2002) ("*White II*") the Ninth Circuit held that merely reducing a punitive damages award to the maximum amount permitted by due process could not cure the constitutional error in that case (allowing the jury to award punitive damages based on extra-territorial conduct) because the appellate court could not know what amount of damages the jury would have awarded if limited to constitutional bounds:

> Possibly the jury would have chosen as large an award had it been told to vindicate only the rights of Nevadans, but possibly it would have chosen a substantially lower award. For all we know, the jury would have applied a much lower ratio than the thirty to one the [district] court chose, or the sixty-six to one that the jury initially chose.

Id. at 1016.

The court of appeals ordered the same remedy when it reconsidered *White* after *Williams*. Again,

the court "conclude[d] that a new trial on punitive damages [wa]s the proper remedy" for a district court's failure to instruct the jury correctly. *White v. Ford Motor Co.*, 500 F.3d 963 (9th Cir. 2007); *see Merrick v. Paul Revere Life Ins. Co.*, 500 F.3d 1007, 1017-18 (9th Cir. 2007) (vacating punitive damages verdict for *Williams* violation and remanding for new trial; noting that it could use "remittitur [to] remedy a jury award deemed unconstitutionally excessive," but deciding against that approach "where the constitutional error stems from misguidance regarding the way the jury may use evidence in setting an amount"); *see also Hansen v. Boyd*, 161 U.S. 397, 411-12 (1896) (remittitur is allowed only if the court can "clearly distinguish and separate" the "erroneous part" of the judgment).

The California Court of Appeal echoed that rationale in its recent decision in *Bullock v. Philip Morris USA, Inc.*, --- Cal. Rptr. 3d ----, 2008 WL 240989 (Ct. App. 2d Dist. Jan. 30, 2008), where it rejected the plaintiff's argument that "the appropriate remedy for any instructional error with respect to punitive damages is for th[e] court to reduce the amount of punitive damages awarded by the jury by way of remittitur." *Id.* at *22. The court concluded that a remittitur "would be inappropriate" because the court "[could not] determine how the instructional error that [it had] found affected the amount of the punitive damages award and [it could not] substitute [its] own assessment of the appropriate amount of punitive damages for that of a jury." *Id.*; *accord Sand Hill Energy, Inc. v. Smith*, 142 S.W.3d 153, 157 (Ky. 2004) (determining that only a new trial on punitive damages could remedy the jury's

improper use of extra-territorial conduct in calculating punitive damages, and providing model jury instructions and verdict form to guarantee due process in new trial).

2. Other courts like the court below, however, have reached the opposite conclusion by holding that a jury's consideration of improper evidence or improper instructions may properly be remedied by simply reducing the award of punitive damages to the maximum amount due process permits. For example, in *Henley v. Philip Morris Inc.*, 9 Cal. Rptr. 3d 29, 71-72 (Ct. App. 1st Dist. 2004), *review granted*, 88 P.3d 497 (Cal. 2004), *review dismissed*, 97 P.3d 814 (Cal. 2004), the jury heard "substantial evidence of wrongful conduct outside California," and the court nonetheless decided that "any error in the consideration of this evidence [would be] sufficiently redressed" by reducing the $50 million award to $9 million, the amount it believed a properly instructed jury would choose. 9 Cal. Rptr. 3d at 71-72; *see Romo v. Ford Motor Co.*, 6 Cal. Rptr. 3d 793, 805, 812 (Ct. App. 2003) (holding award not limited to party harm would be cured by a reduction to the amount "a properly instructed jury likely would award"), *overruled in part on other grounds by People v. Ault*, 95 P.3d 523 (Cal. 2004).

Similarly, in *Williams v. ConAgra Poultry Co.*, 378 F.3d at 797-98, the Eighth Circuit reduced to the constitutional maximum an award of punitive damages that was based on "evidence of [racial] harassment not suffered by [the plaintiff]."[9]

---

[9] More recently, Eighth Circuit Judge Bye has criticized that approach, arguing that "[t]he proper remedy for instruc-

In *Ford Motor Co. v. Ammerman*, 705 N.E.2d 539, 559-62 (Ind. Ct. App. 1999), the Indiana Court of Appeals likewise approved the reduction of a punitive damages award based on extra-territorial conduct, concluding that the error would be cured by "reduc[ing] the $58 million award to $13.8 million, which represented Ford's retooling costs [to make the Bronco II more stable], along with an additional $54.00 representing the cost for additional hardware installed on each vehicle" – a calculation that was never even presented to the jury as an option. *Id.* at 559.

There is thus a significant conflict among the circuits and the state courts over the proper remedy for improper consideration of nonparty harm. The Court should grant the petition and resolve this recurring question on which it granted review in *BMW*.

B. This Court Should Hold That Judicial Reduction Of The Award To A "Constitutional Maximum" Is Not The Appropriate Remedy For An Award Based On Constitutionally Invalid Instructions.

In this case, the appellate court reduced the punitive damages award to the "highest figure" it deemed

---

tional error is a new trial on damages." *See Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 606-607 (8th Cir. 2005) (Bye, J., concurring in result) (explaining that he "[d]id not believe the punitive damages instruction . . . sufficiently limited the jury's consideration to the damages suffered by [the plaintiff]," and arguing that "a remittitur normally should not be used to cure an instructional error" unless a defendant has agreed to it).

consistent with due process, App. 110a, as if the only defect in the jury's award was that it was too high. But the award was tainted because it was based on improper evidence, and that problem should have been remedied through a new punitive damages trial. When the Constitution has been violated, courts must provide a remedy that redresses that violation. *See, e.g.*, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 161-63 (1803). A reduction of punitive damages to the highest amount allowed under the Constitution does not cure – or even address – the constitutional violation. The proper redress is instead to allow an untainted jury to decide the proper amount of punitive damages.

This Court's precedents compel that conclusion. As this Court has held in *Williams*, *State Farm*, and *BMW*, an award can violate due process *either* because it exceeds the due-process maximum, *or* because it impermissibly bases punitive damages on conduct that did not harm plaintiffs. *See Williams*, 126 S. Ct. at 1062-63; *State Farm*, 538 U.S. at 416-17; *BMW*, 517 U.S. at 574-75. These two limitations on punitive damages require different remedies. In the first situation – substantive excessiveness – a reviewing court may remedy an excessive award by reducing it, because the court knows how much the (properly charged) jury awarded, and it is the reviewing court's responsibility to determine the constitutional maximum. *See Cooper Indus. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436 (2001) (mandating *de novo* review of the constitutionality of punitive damages awards).

But in the second situation – improper evidence or instructions – a reduction in the award to the con-

stitutional maximum does little to remedy the error because the reviewing court has no way of knowing what weight the jury gave to the improper considerations and thus what portion of the verdict is infected. *See*, *e.g.*, *White II*, 312 F.3d at 1016. The jury's tainted verdict, of course, provides no helpful starting point. Attempting to "cure" a jury's consideration of improper conduct in awarding punitive damages by reducing the amount of the award is no less unsatisfying than remedying the use of a coerced confession in a criminal trial by reducing the defendant's ultimate sentence.

The reduction of a tainted award cannot cure the procedural errors the trial court made here. Even assuming that there was evidence of harm to plaintiffs that could have justified an award of punitive damages, the jury might have decided to award *no* punitive damages – or at least an amount significantly under the *constitutional* maximum – based solely on the harm to plaintiffs' property. *See* 1 Dan B. Dobbs, *The Law of Remedies*, § 3.11(1), at 458 (2d ed. 1993); *see also*, *e.g.*, *Smith v. Wade*, 461 U.S. 30, 52 (1983) (a jury generally has the discretion to award zero punitive damages, even when it finds that the factual predicate for punitive damages has been established). When a jury's verdict is infected by the consideration of improper evidence, reduction of the verdict to the maximum allowed by due process does nothing to ensure that the defendant has not been punished based on unconstitutional considerations. This Court should grant certiorari and hold that a new trial is the appropriate remedy.

III. THE COURT OF APPEAL'S IMPOSITION OF A 2:1 RATIO OF PUNITIVE TO

COMPENSATORY DAMAGES DEEPENS A DIVIDE IN THE LOWER COURTS.

Apart from the Court of Appeal's error in failing to identify and remedy the jury's consideration of irrelevant harm to nonparties, the punitive damages award in this case is excessive. This Court recognized in *State Farm* that compensatory damages have a deterrent function, and that when compensatory damages are substantial, a State may have no further interest in punishing and deterring a defendant. *See* 538 U.S. at 419. If punitive damages may be awarded at all in cases of substantial compensatory damages, the Court suggested, the maximum permissible ratio of punitive to compensatory damages is 1:1. Yet the lower courts remain confused regarding when the 1:1 upper limit is appropriate. This Court should grant the petition to provide clarity on this issue.

A. The Decision Below Disregards *State Farm* And Highlights A Split In The Lower Courts Regarding The Permissible Ratio When Compensatory Damages Are Substantial.

The punitive damages award of $112 million was affirmed despite the fact that plaintiffs were awarded $56 million in remediation costs, which far exceeded the actual loss of the $1.5 million value of their property.[10] The Court of Appeal's approval of a

[10] Louisiana law permits a jury to award as damages the cost of remediating a property, even if that cost exceeds the value of the property itself. *See* App. 63a-67a (discussing *Roman Catholic Church of the Archdiocese of New Orleans v. La. Gas Serv. Co.*, 618 So. 2d 874 (La. 1993)).

2:1 ratio of punitive damages cannot be squared with *State Farm*, which teaches that, at most, a 1:1 ratio is appropriate in this case.

In *State Farm*, this Court addressed the purposes served by punitive damages awards: punishment and deterrence. It recognized that, where "compensatory damages are substantial," there is significant punishment and deterrence even before any amount of punitive damages are awarded. 538 U.S. at 425 (finding substantial $1 million compensatory award). In the amount of a "substantial" compensatory award, therefore, "[i]t 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's culpability, *after* having paid compensatory damages, is so reprehensible as to warrant the imposition of *further* sanctions to achieve punishment or deterrence." 538 U.S. at 419 (emphasis added).[11]

---

[11] Indeed, this Court has made clear that, where the State's legitimate interest in punishment and deterrence *is* fully vindicated by a compensatory award, a court has no legitimate basis on which to award punitive damages at all. *See Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) ("[d]eterrence . . . operates through the mechanism of damages that are compensatory"); *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332-33 (5th Cir. 1985) (deterrence "may be achieved without awarding exemplary damages" if compensatory damages are large); *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349-50 (1974) (holding punitive damages unconstitutional in certain defamation actions because they are "wholly irrelevant to the state interest that justifies a negligence standard for private defamation actions"); *Bettius & Sanderson, P.C. v. Nat'l Union Fire Ins. Co.*, 839 F.2d 1009, 1016-17 (4th Cir. 1988) (punitive damages unrecoverable against insurance company where a different doctrine of state

But even assuming that some punitive damages are necessary for punishment and deterrence even after a substantial compensatory verdict, *State Farm* teaches that "a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." 538 U.S. at 425. The lower courts have given varying weight to this aspect of *State Farm*, with some strictly adhering to a maximum ratio of 1:1 in cases of substantial compensatory damages, and others disregarding it entirely. For example, several courts have limited the ratio of punitive to (substantial) compensatory damages to roughly 1:1, even in cases involving serious physical harm or intentional misconduct. *See*, *e.g.*, *Estate of Moreland v. Dieter*, 395 F.3d 747, 757-58 (7th Cir. 2005) ($27.5 million in punitives on $29 million in compensatories for beating and death); *Boerner*, 394 F.3d at 602-03 ($5 million in punitives on $4 million in compensatories for design defect that caused illness and death); *Stamathis v. Flying J, Inc.*, 389 F.3d 429, 443 (4th Cir. 2004) ($350,000 in punitives on $250,000 in compensatories for defamation and malicious prosecution).

By contrast, other courts have sanctioned much higher ratios, effectively ignoring *State Farm*. *See*, *e.g.*, *Action Marine, Inc. v. Cont'l Carbon, Inc.*, 481 F.3d 1302 (11th Cir. 2007) (ratio of over 5:1 based on $3.2 million in compensatories for claims of trespass and misrepresentation based on company's emission of pollutant), *petition for cert. filed*, 76 U.S.L.W. 3082 (U.S. Aug. 24, 2007) (No. 07-257); *Seltzer v. Morton*,

---

law already "punishe[d] the insurer for its bad faith . . . and deter[red] similar conduct by other insurance companies").

154 P.3d 561 (Mont. 2007) (ratio of over 18:1 based on $1.1 million in compensatories for abuse of process and malicious prosecution); *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 345 F.3d 1366, 1371-72 (Fed. Cir. 2003) (3:1 ratio based on $15 million in compensatories for patent infringement and related claims); *Williams v. Philip Morris, Inc.*, 127 P.3d 1165, 1182 (Or. 2006) (97:1 ratio based on $800,000 in compensatories for fraud).

B. This Court Should Grant Review And Instruct That In This Case Of Substantial Compensatory Damages, Punitive Damages Were Not Warranted At All, Much Less In A Ratio Of 2:1

The Court should use this case as a vehicle to clarify where the outermost limit of due process lies when compensatory damages based on economic harm are unquestionably substantial.

In this case, the $112 million punitive damages award affirmed by the Court of Appeal far exceeds the limits of punishment and deterrence allowed under the Due Process Clause. It is undisputed that plaintiffs suffered only economic injury, App. 55a, and the $56 million compensatory award allows (but does not require) them to completely remediate their $1.5 million property to their own standards – standards far above anything that even the Louisiana Department of Environmental Quality ("DEQ") deemed necessary.[12] Given the solely economic in-

[12] The DEQ entered this litigation in support of ExxonMobil to point out that the "fail[ure] to follow or apply DEQ regulations in cases involving environmental remediation" results in inflated compensatory damages awards like the one here,

jury and the substantial compensatory damages award that afforded "complete compensation" – and then some – this is the paradigm case in which no punitive damages are necessary to punish or deter. *State Farm* 538 U.S. at 426.

Certainly the amount awarded bears no "reasonable relationship" to plaintiffs' injury. *BMW*, 517 U.S. at 580. As the Court explained in *State Farm*, the careful balancing between punitive and compensatory damages is intended to ensure that any punishment imposed is proportionate to the "*harm suffered by the plaintiff*." 538 U.S. at 418 (emphasis added). That balancing requires an *accurate* assessment of the plaintiff's harm, not rote multiplication of a "compensatory" award that does far more than compensate. *See id.* at 426 ("The compensatory damages for the injury suffered . . . likely were based on a component which was duplicated in the punitive award."); *Bach v. First Union Nat'l Bank*, 149 F. App'x 354, 366 (6th Cir. 2005) (describing ratio of over 6:1 "alarming" and noting that "much of the compensatory damage award must be attributable to [plaintiff's] pain and suffering," which "compel[led] the conclusion that the punitive damage award [wa]s duplicative"). Allowing punitive damages to be based on the multiplication of an already-exaggerated award distorts the balance between

---

which in turn result in inflated punitive damages awards. *Amicus Curiae* Br. of La. DEQ 5, *Grefer v. Alpha Technical*, No. 05-C-1590 (La. June 23, 2005). The cost to remediate plaintiffs' property to DEQ standards for unrestricted use was far less than the $56 million award: $46,000 according to ExxonMobil's expert and $1,387,310 according to one of plaintiffs' witnesses. App. at 35-36a.

punishment and compensation and allows plaintiffs to circumvent the limitations of *State Farm* and *BMW* by seeking inflated compensatory damages in the first instance.

In this case, plaintiffs' actual harm for ratio purposes is at most the value of the $1.5 million property, not the $56 million awarded for plaintiffs might use to remediate it. At any rate, no additional punishment or deterrence is necessary beyond the $56 million "compensatory" award.

If this Court's precedent does permit punishment beyond the compensatory damages awarded here, certainly the maximum permissible ratio is 1:1. The Court of Appeal recognized that the $56 million award is undeniably "substantial" within the meaning of *State Farm*, acknowledged *State Farm*'s teaching that a 1:1 ratio is the maximum allowed under such circumstances, and all but sanctioned a 1:1 ratio of punitive to compensatory damages when it stated that, in light of the "substantial" compensatory award and the fact that "plaintiffs claimed only property damage," "a punitive damages award closer to the amount of compensatory damages" was appropriate. *Id.* at 25a, 26a. The Court of Appeal nonetheless imposed, without any explanation, a 2:1 ratio instead. That award cannot be justified by any need for punishment or deterrence, and this Court should grant certiorari to reiterate that *State Farm* does not permit it.

* * *

The punitive damages award in this case defies *Williams* and raises serious constitutional questions left unanswered by *Williams*, *BMW*, and *State Farm*.

Those questions have percolated in the lower courts for a number of years and created significant splits in authority. This Court should grant the petition and (1) hold that plaintiffs are not entitled to any award of punitive damages when the alleged harm that served to make the defendant's conduct reprehensible was suffered (if at all) only by nonparties to the case and not by plaintiffs; (2) set forth the proper remedy for improper reliance upon harms to nonparties; and (3) consider the substantive limits on an award of punitive damages when compensatory damages are substantial. Given the Court of Appeal's manifest failure to apply *Williams*, this Court could summarily reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GLEN M. PILIE
RONALD J. SHOLES
LOUIS C. LACOUR, JR.
MARTIN A. STERN
ADAMS AND REESE LLP
4500 One Shell Square
New Orleans, Louisiana
70139
(504) 581-3234

WALTER DELLINGER
(*Counsel of Record*)
MATTHEW M. SHORS
KATHRYN E. TARBERT*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

**Admitted only in Wisconsin; supervised by principals at the firm*

February 14, 2008