IN THE SUPREME COURT OF FLORIDA

CASE NO.: 81,004

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W.R. GRACE & CO.-CONN,
a Connecticut Corporation,

Petitioner

vs.

THOMAS WATERS and
ELOISE AGNES WATERS, his wife

Appellees.

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ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEALS
CASE NUMBERS: 90-1838; 90-2010; and 91-282

# BRIEF OF AMICUS CURIAE ACADEMY OF FLORIDA TRIAL LAWYERS

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## QUESTION PRESENTED

Whether punitive damages should be available in mass tort products liability litigation against defendants who have engaged in willful, wanton or gross misconduct, where the legislature has carefully structured the availability of punitive damage awards to prevent abuse by plaintiffs and juries, and such awards serve this state's public policy by deterring manufacturers and other corporate defendants from willfully or wantonly exposing florida consumers to dangerously defective products?



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## SUMMARY OF THE ARGUMENT

The Legislature has carefully limited the availability of exemplary damages in Florida. Only willful, wanton, or gross misconduct will expose a defendant to punitive damages. § 768.73, Fla. Stat. The plaintiff must plead with specificity the conduct for which punitive damages are sought, and must proffer evidence which would provide a "reasonable basis" for recovery of such damages. § 768.72, Fla. Stat. The statute permits defendants, on a case-by-case basis, to seek determination by the court as to the legal availability of punitive damages. Henn v. Sandler, 589 So.2d 1334, 1335-36 (Fla. 4th DCA 1991). Jury awards of exemplary damages are closely tied to compensatory damages; punitive damages that amount to more than three times the amount of compensatory damages are presumed to be unreasonable. § 768.73(1)(b), Fla. Stat. The presumption may only be defeated by "clear and convincing evidence" that the award is not excessive. Id. Further, a defendant is permitted to present evidence of prior punitive damage awards against it, in mitigation of successive awards. Baione v. Owens-Illinois, Inc., 599 So. 2d 1377, 1378 (Fla. 2d DCA 1992). The fact that defense counsel may choose, as a matter of trial tactics, not to present such evidence, does not render the availability of exemplary damages unreasonable or unconstitutional.

Punitive damages serve two public policy goals: to punish the offender and deter others who might be inclined to act similarly. Fisher v. City of Miami, 172 So. 2d 455 (Fla. 1965); Chrysler Corp. v. Wolmer, 499 So. 2d 823 (Fla. 1986). Punitive damages should



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continue to be available in mass tort litigation so that all potential defendants will be on notice that wanton, willful or gross misconduct is punishable, and that no amount of financial planning or risk management wizardry can substitute for responsible business practices. This Court and three of the State's five District Courts of Appeal have affirmed the use of punitive damages in asbestos litigation. Celotex Corp. v. Pickett, 490 So. 2d 35 (Fla. 1986); Johns-Manville Sales Corp. v. Janssens, 463 So. 2d 242 (Fla. 1st DCA 1984), review denied, 467 So. 2d 999 (Fla. 1985); Baione v. Owens-Illinois, Inc., 599 So. 2d 1377 (Fla. 2d DCA 1992); United States Mineral Products Co. v. Waters, 610 So. 2d 20 (Fla. 3d DCA 1992) (the instant appeal).



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## INTRODUCTION

The roots of W.R. Grace's attack on punitive damage awards in mass tort litigation are found in Roginsky v. Richardson-Merrell, Inc., 378 F.2d 832 (2d Cir. 1967), where Judge Friendly, in his now-infamous dicta, mused aloud: "We have the greatest difficulty in perceiving how claims for punitive damages in such a multiplicity of actions throughout the nation can be so administered as to avoid overkill." Id. at 839; See Initial Brief of Petitioner W.R. Grace & Co.-Conn. at p. 11; Brief of Amicus Curiae Product Liability Advisory Council, Inc. at p. 13; Brief of Amicus Curiae Owens-Corning Fiberglas Corporation at p. 8.

This one sentence has echoed through courthouses across the country for the past 25 years as the clarion call to corporate irresponsibility and evasiveness. From this tiny spark has sprung a feverish movement by corporate defendants to pull down the doctrine of punitive damages itself and slide deftly out from under the burden of responsibility for their reckless business practices and callow disregard for the safety of consumers and employees.

No matter that, on the same page, Judge Friendly concluded:

> We know of no principle whereby the first punitive damage award exhausts all claims for punitive damages and would thus preclude future judgments. . . . Neither does it seem either fair or practicable to limit punitive recoveries to an indeterminate number of first-comers, leaving it to some unascertained court to cry, 'Hold, enough,' in the hope that others would follow.

Id. at 839-40.



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No matter that, 23 years later, the Second Circuit itself had still not incorporated the Roginsky dicta into law. See Simpson v. Pittsburgh Corning Corp., 901 F.2d 277 (2d Cir. 1990) (assessing punitive damages against an asbestos manufacturer that had been so penalized in prior cases does not violate due process considerations).

No matter that the overwhelming majority of courts in this country have specifically declined to follow the Roginsky dicta. See, e.g., Simpson v. Pittsburgh Corning Corp., 901 F.2d 277 (2d Cir. 1990); Campbell v. ACandS, Inc., 704 F. Supp. 1020 (D. Mont. 1989); Sturm, Ruger & Co., Inc. v. Day, 594 P.2d 38 (Alaska 1979); Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984); Froud v. Celotex Corp., 437 N.E.2d 910 (App. Ct. Ill. 1982), reversed on procedural grounds, 456 N.E.2d 131 (Ill. 1983); Tetuan v. A.H. Robins Co., 738 P.2d 1210 (Kan. 1987); Gryc v. Dayton-Hudson Corp., 297 N.W.2d 727 (Minn. 1980); Fischer v. Johns-Manville Corp., 512 A.2d 466 (N.J. 1986); State ex rel. Young v. Crookham, 618 P.2d 1268 (Or. 1980); Martin v. Johns-Manville Corp., 494 A.2d 1088 (Penn. 1985); Davis v. Celotex Corp., 420 S.E.2d 557 (W. Va. 1992); Wangen v. Ford Motor Co., 294 N.W.2d 437 (Wis. 1980).

No matter that this Court and every intermediate appellate court in Florida to have considered the issue of punitive damages in mass tort litigation has rejected the Roginsky dicta. The Florida Supreme Court and three Florida District Courts of Appeal have each concluded that exemplary damages should be available in asbestos cases. Celotex Corp. v. Pickett, 490 So. 2d 35 (Fla.



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1986); Johns-Manville Sales Corp. v. Janssens, 463 So. 2d 242 (Fla. 1st DCA 1984) review denied, 467 So.2d 999 (Fla. 1985); Baione v. Owens-Illinois, Inc., 599 So. 2d 1377 (Fla. 2d DCA 1992); United States Mineral Products Co. v. Waters, 610 So. 2d 20 (Fla. 3d DCA 1992) (the instant appeal).

No matter that the majority of scholarly treatments of this issue have concluded that exemplary damages should continue to be imposed in mass tort and product liability cases against reckless corporate defendants as punishment for that defendant's past behavior and deterrence against such future conduct by other businesses.[1]

Despite the overwhelming weight of legal authority and policy considerations against the Roginsky dicta, its liberating heresy -- no punitive damages for deliberate corporate malfeasance! -- continues to call seductively, and has been answered in the instant appeal by asbestos defendants in Florida.

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[1]See, e.g., Special Project, An Analysis of the Legal, Social, and Political Issues Raised by Asbestos Litigation, 36 VAND. L. REV. 573, 691-693 (1983); Belli, Punitive Damages: Their History, Their Use and Their Worth in Present-Day Society, 49 UMKC L. REV. 1, 23 (1980); Igoe, Punitive Damages in Products Liability Cases Should be Allowed, 22 TRIAL LAW. GUIDE 24, 29 (1978); Owen, Problems in Assessing Punitive Damages Against Manufacturers of Defective Products, 49 U. CHI. L. REV. 1, 59; Owen, Punitive Damages In Products Liability Litigation, 74 MICH. L. REV. 1257, 1371 (1976); Note, Exemplary Damages in Products Liability Cases, 1980 DET. C.L. REV. 647, 666-67; Note, Mass Liability and Punitive Damages Overkill, 30 HASTINGS L. J. 1797, 1813-14 (1979);



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## ARGUMENT

### I.

PUNITIVE DAMAGES ARE AVAILABLE IN MASS TORT PRODUCTS LIABILITY CASES, WHERE FLORIDA LAW PERMITS A JURY, IN LIMITED AND CAREFULLY DELINEATED CIRCUMSTANCES, TO ASSESS THESE EXEMPLARY DAMAGES AGAINST DEFENDANTS WHO HAVE ENGAGED IN WILLFUL, WANTON OR GROSS MISCONDUCT AND SUCH AWARDS SERVE THIS STATE'S PUBLIC POLICY BY DETERRING MANUFACTURERS AND OTHER CORPORATE DEFENDANTS FROM WILLFULLY OR WANTONLY EXPOSING FLORIDA CONSUMERS TO DANGEROUSLY DEFECTIVE PRODUCTS.

**A. The Legislature has already provided for strict judicial control over punitive damage claims without requiring judicial encroachment into matters traditionally reserved for the trier of fact.**

The Legislature has carefully limited the availability of exemplary damages in Florida. Only willful, wanton, or gross misconduct will expose a defendant to punitive damages. § 768.73, Fla. Stat. The plaintiff must plead with specificity the conduct for which punitive damages are sought, and must proffer evidence which would provide a "reasonable basis" for recovery of such damages. § 768.72, Fla. Stat. The statute permits defendants, on a case-by-case basis, to seek determination by the court as to the legal availability of punitive damages. Henn v. Sandler, 589 So. 2d 1334, 1335-36 (Fla. 4th DCA 1991). Defendants are still free to present to the jury evidence that would tend to mitigate the amount of any punitive damage awards. Jury awards of exemplary damages are closely tied to compensatory damages; punitive damages that amount to more than three times the amount of compensatory damages are presumed to be unreasonable. § 768.73(1)(b), Fla. Stat. The presumption may only be defeated by "clear and convincing evidence"



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that the award is not excessive. Id. Further, a defendant is permitted to present evidence of prior punitive damage awards against it, in mitigation of successive awards. The fact that defense counsel may choose, as a matter of trial tactics, not to present such evidence, does not render the availability of exemplary damages unreasonable or unconstitutional.

**1. Plaintiffs must meet rigid case-by-case procedural prerequisites before punitive damages become available.**

Punitive damages in Florida are governed by § § 768.72 and 768.73, Florida Statutes:

> In any civil action based upon negligence, strict liability, products liability...involving willful, wanton, or gross misconduct, the judgment for the total amount of punitive damages awarded to a claimant may not exceed three times the amount of compensatory damages awarded to each person entitled thereto by the trier of fact.

§ 768.73(1)(a), Fla. Stat. (1993).

Plaintiffs seeking punitive damages are held to strict pleading and proof requirements: the willful, wanton, or gross misconduct by the defendant giving rise to such exemplary damages must be plead with specificity. The burden is upon the plaintiff to make the necessary proffer of underlying facts to support punitive damages. "[N]o claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages." § 768.72, Fla. Stat. (1993); Will v. Systems Engineering Consultants, Inc., 554 So. 2d 591, 592 (Fla. 3d DCA 1989) ("the burden to show 'a



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reasonable basis for recovery of such damages' is on the plaintiff, not on the defendant.").

Further, this Court has held that Section 768.72 creates in a defendant the substantive right to be immune from punitive damage claims, even for discovery purposes, until a plaintiff has made the necessary proffer. Smith v. Department of Insurance, 507 So. 2d 1080, 1092 n.10 (Fla. 1987). Thus, the statute's proffer requirement entitles the defendant to a pretrial ruling by the court on the legal availability of punitive damage claims on a case-by-case basis. Henn v. Sandler, 589 So. 2d 1334, 1335-36 (Fla. 4th DCA 1991) (trial judge, upon proffer by plaintiff of "reasonable evidentiary basis" for assessment of punitive damages, must make preliminary legal determination that the defendant's conduct is sufficiently willful or wanton to warrant submission of the claim to the jury).

Florida courts are not reticent about exercising the managerial control afforded by the statute. In Aerovias Nacionales de Colombia, S.A. v. Tellez, 596 So. 2d 1193 (Fla. 3d DCA 1992), the plaintiffs, representatives of Colombian nationals killed in a plane crash, sought punitive damages from the airline.[2] The plaintiff had proffered evidence pursuant to Section 768.72 that the airline had been grossly negligent. Id. at 1194. The trial court granted the plaintiffs' motion to amend their complaint to

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[2]The allegedly negligent conduct and the crash all occurred in New York; thus, the trial court was applying New York's substantive punitive damage law, which requires willful or wanton negligence or recklessness. Id. at 1194.

add a new count for punitive damages, and denied the defendant's motion to dismiss pending punitive damage counts. Id. at 1193. The Third District reversed, finding that the plaintiff had not presented to the court sufficient proof that the defendant's alleged negligence rose to the level of willful or wanton sufficient to support exemplary damages. On remand, the trial court was directed to enter an order denying the plaintiffs' motion to amend and to grant the defendant's motion to dismiss the pending punitive damage claims. Id.

Once the requisite legal showing has been proffered, the question of whether a defendant is liable for punitive damages is properly one for the jury. Wackenhut Corp. v. Canty, 359 So. 2d 430, 435-36 (Fla. 1978). See also Johns-Manville Sales Corp. v. Janssens, 463 So. 2d 242, 248 (Fla. 1st DCA 1984), review denied, 467 So. 2d 999 (Fla. 1985).

However, limitations are also placed upon the jury's discretion to award exemplary damages. Punitive damages that are more than three times the compensatory award are presumed to be excessive. § 768.73(1)(b). The defendant "is entitled to remittitur of the amount in excess of the limitation unless the claimant demonstrates to the court by clear and convincing evidence that the award is not excessive in light of the facts and circumstances which were presented to the trier of fact." Id. Further, only 65 percent of a punitive damage award is actually awarded to the plaintiff. Id. at (2)(a).



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As an added safeguard against improper levy of punitive damages, defendants are permitted to present evidence to the jury that would mitigate or obviate an assessment of punitive damages. Baione v. Owens-Illinois, Inc., 599 So. 2d 1377, 1378 (Fla. 2d DCA 1992) (previous punitive damages assessed against asbestos defendant would be an issue of mitigation to be considered by the trier of fact). That defense counsel may choose, for tactical reasons, not to submit such evidence to the trier of fact, does not make the damages themselves "unreasonable" or the statutory scheme unconstitutional. See Palmer v. A.H. Robins Co., Inc., 684 P.2d 187, 216 (Colo. 1984) (defendant's claim that punitive damage assessment against it amounted to unconstitutional "overkill" was purely speculative, since defendant chose not to present evidence to jury of past punitive damage verdicts); Tetuan v. A.H. Robins Co., 738 P.2d 1210, 1241 (Kan. 1987) (defendant's exposure to other punitive damage claims should have been presented to jury as evidence in mitigation of instant exemplary damages claim; fact that defendant chose not to introduce such evidence at trial was not grounds for upsetting jury's assessment of punitive damages).

Florida's system of punitive damages, as set forth by the Legislature and enforced by the state's courts, and a defendant's ability to present evidence to the jury of previous assessments in mitigation of successive awards, ensures that defendants in mass tort products liability cases are not subjected to spurious claims or unreasonable awards for exemplary damages. There is no reason, based upon law or public policy, for this Court to upset that

statutory scheme by declaring a certain category of defendants liable for willful, wanton or gross misconduct immune from punitive damages.



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**B. Preserving the threat of punitive damage awards against manufacturers and other corporate defendants will deter present and future businesses from willfully or wantonly exposing Florida consumers to dangerously defective products.**

Punitive damages serve two public policy goals: to punish the offender and deter others who might be inclined to act similarly. Fisher v. City of Miami, 172 So. 2d 455 (Fla. 1965); Chrysler Corp. v. Wolmer, 499 So. 2d 823 (Fla. 1986). Punitive damages should continue to be available in mass tort litigation so that all potential defendants will be on notice that wanton, willful or gross misconduct is punishable, and that no amount of financial planning or risk management wizardry can substitute for responsible business practices. The Florida Supreme Court and three of the state's five District Courts of Appeal have affirmed the use of punitive damages in asbestos litigation. Celotex Corp. v. Pickett, 490 So. 2d 35 (Fla. 1986); Johns-Manville Sales Corp. v. Janssens, 463 So. 2d 242 (Fla. 1st DCA 1984), review denied, 467 So. 2d 999 (Fla. 1985); Baione v. Owens-Illinois, Inc., 599 So. 2d 1377 (Fla. 2d DCA 1992); United States Mineral Products Co. v. Waters, 610 So. 2d 20 (Fla. 3d DCA 1992) (the instant appeal).

This Court has unambiguously set forth the policy goals served by assessing punitive damages: to punish the offender and deter others who might be inclined to act similarly. Dr. P. Phillips & Sons, Inc. v. Kilgore, 12 So. 2d 465 (Fla. 1943); Fisher v. City of Miami, 172 So. 2d 455 (Fla. 1965); Campbell v. Government Employees Ins. Co., 306 So. 2d 525 (Fla. 1974); Mercury Motors Express, Inc.



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v. Smith, 393 So. 2d 545 (Fla. 1981); Chrysler Corp. v. Wolmer, 499 So. 2d 823 (Fla. 1986).

W.R. Grace does not dispute this point; rather, it pleads piteously that it has learned its lesson and promises solemnly never to do it again. Miraculously transformed into a model of the corporate good citizen, W.R. Grace tell us that it now wants to go forth into the world and commit good acts: compensating those victims of its past unsafe business practices, and proceeding with the business of making money for corporate officers and employees alike. But we cannot do good things, W.R. Grace says, if we continue to be weakened by successive punitive damage awards. Thus, the defendant argues that it has been punished and deterred sufficiently, and asks this Court to clamp onto its wounds the salve of immunity from any further punitive damage judgments.

Grace's newfound solicitude notwithstanding, the "financial interests of the malicious and wanton wrongdoer must be considered in the context of societal concern for the injured and the future protection of society." State ex rel. Young v. Crookham, 618 P.2d 1268, 1271 (Or. 1980).

The real issue in this appeal is much larger than either W.R. Grace or the Cross-Appellees: it is deterring other producers and manufacturers from deciding to put defective or dangerous products into the marketplace "'because it was cheaper to pay damages . . . than to do the work in a different way.'" Campbell v. Government Employees Ins. Co., 306 So. 2d 525, 531 (Fla. 1974) (quoting from Funk v. Kerbaugh, 222 Pa. 18, 19, 70 A. 953, 954 (1908)). Punitive



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damages should continue to be available in mass tort litigation so that all potential defendants will be on notice that wanton, willful or gross misconduct is punishable, and that no amount of long-range "cost of litigation" planning can substitute for responsible business practices. W.R. Grace asks this Court to relieve it of liability for punitive damages "merely because, through outrageous misconduct, they may have managed to seriously injure a large number of persons. Such a rule would encourage wrongdoers to continue their misconduct because, if they kept it up long enough to injure a large number of people, they could escape all liability for punitive damages." Froud v. Celotex Corp., 437 N.E.2d 910, 913 (App. Ct. Ill. 1982) (emphasis in the original), reversed on procedural grounds, 456 N.E.2d 131 (Ill. 1983).

### 1. Florida law recognizes the availability of punitive damages in asbestos-related personal injury actions.

This Court has already affirmed the use of punitive damages in asbestos litigation. In Celotex Corp. v. Pickett, 490 So. 2d 35 (Fla. 1986), the defendant was a successor corporation to a business that had manufactured asbestos-containing products. Id. at 36. The plaintiff, in his job as an insulator at a Jacksonville shipyard, extensively used asbestos cement manufactured by the predecessor corporation. Id. The predecessor and successor corporations merged prior to the accrual of the plaintiff's cause of action, so that the plaintiff sued the predecessor corporation for his asbestos-related injuries. Id. He was awarded $500,000 in compensatory damages and $100,000 in punitive damages. On appeal,

the successor company argued that the punitive damage award contravened the public policy deterrence goals of exemplary damages, since the predecessor corporation was the "real wrongdoer." Id. at 37.

This Court disagreed, and upheld the punitive damages, finding that the policy goals were fully met. Id. at 38. The conduct to be deterred, the court observed, was that of merging with companies which have engaged in reckless conduct detrimental to the public health:

> Were we to hold that the potential for punitive damages disappears at merger, this may well encourage reckless conduct. Our holding here recognizes that since reckless wrongdoing by the predecessor can result in liability for punitive damages against the successor, acquisition candidates are deterred from such actions. Realization that their companies will sell for less, or not at all, if they engage in reckless behavior provides an incentive for acquisition candidates to conform their behavior to socially acceptable norms.

Id. See also Johns-Manville Sales Corp. v. Janssens, 463 So. 2d 242 (Fla. 1st DCA 1984) and Baione v. Owens-Illinois, Inc., 599 So. 2d 1377 (Fla. 2d DCA 1992) (upholding the availability of punitive damages in asbestos litigation).

**2. The threat of punitive damages makes the cost of marketing unsafe products so unpredictable as to encourage safe business practices.**

The rationale supporting the Pickett decision also applies when the conduct to be discouraged is the original willful, wanton or gross misconduct that is detrimental to the public health. Compensatory damages, even in mass tort litigation, can often be forecast with enough accuracy to permit risk managers to factor

those awards into a cost-benefit analysis for new products. "The risk and amount of such damages can, and in some cases will, be reflected in the cost of a product, in which event the product will be marketed in its dangerous condition." Fischer v. Johns-Manville Corp., 512 A.2d 466, 477 (N.J. 1986). See also Sturm, Ruger & Co., Inc. v. Day, 594 P.2d 38, 47 (Alaska 1979) (punitive damages deter manufacturers of unsafe products where it would be cheaper for the manufacturer to pay compensatory damages to future claimants than it would be to remedy the product's defect).

Punitive damages, however, are not so easily absorbed into the risk management calculus. The uncertainty over how much a manufacturer might be forced to pay in punitive damages makes "cost of litigation" forecasting unreliable. The specter of exemplary damages will encourage manufacturers to adequately safeguard their products before they are marketed, by removing the incentive to beat the system by "buying out" prospective plaintiffs:

> Without punitive damages a manufacturer who is aware of a dangerous feature of its product but nevertheless knowingly chooses to market it in that condition, willfully concealing from the public information regarding the dangers of the product, would be far better off than an innocent manufacturer who markets a product later discovered to be dangerous - this, because both will be subjected to the same compensatory damages, but the innocent manufacturer, unable to anticipate those damages, will not have incorporated the cost of those damages into the cost of the product. All else being equal, the law should not place the innocent manufacturer in a worse position than that of a knowing wrongdoer. Punitive damages tend to meet this need.

Fischer at 477 (emphasis added).

Were this Court to eliminate punitive damages in asbestos and other mass tort products liability cases, the corporate risk



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actuaries would run amok, and it is not hyperbole to suggest that Florida would become a playground for shoddy and dangerous workmanship. High courts in most other jurisdictions have wisely declined to accept this perilous invitation. Davis v. Celotex Corp., 420 S.E.2d 557, 565 (W.Va. 1992) ("The majority of courts faced with this issue have held that punitive damages do not violate substantive due process."); Wangen v. Ford Motor Co., 294 N.W.2d 437, 461 (Wis. 1980) ("[W]e do not believe this court should abandon the concept of punitive damages in all product liability suits and ask the citizens of this state to wait for a national law or legislative reform in all 50 states").

W.R. Grace insists that it faces bankruptcy as a result of continued exposure to punitive damages in Florida, and will point to the Johns-Manville bankruptcy as proof of its impending demise. However, W.R. Grace has presented no evidence that its exemplary damage payouts are so much less than its payouts in settlements and compensatory damage awards, to say nothing of its legal fees, that the sudden absence of punitive damages will make any difference to the future health of W.R. Grace, a company that shows remarkable robustness for one that argues in the instant appeal that it faces imminent death.

Even were these dire predictions true, the demise of W.R. Grace should not cause undue grief. There would be a bittersweet irony in the destruction of a company by the same product upon which it had built its fortunes. A more ancient code of law would call that justice.



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The judicial compassion that W.R. Grace now seeks, if that is all that will save it, is better spent on those men and women living in quiet desperation, upon whom W.R. Grace cast a cold and unyielding eye so many years ago.



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## CONCLUSION

Because defendants are adequately protected from the misuse of punitive damages by both plaintiffs and juries, and the policy goals of punishment and deterrence continue to be met by exposing mass tort products liability defendants to assessments of exemplary damages, Amicus Curiae Academy of Florida Trial Lawyers respectfully urge this Court to affirm the Third District Court of Appeal's decision to reinstate the Waters' claim for punitive damages.



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## CERTIFICATE OF MAILING

WE HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed by United States mail to all counsel listed below, on this ____ day of May, 1993.

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