

ASSESSMENT OF PUNITIVE DAMAGES AGAINST CHINESE (& OTHER NON-U.S.) BUSINESSES

Punitive damages may be assessed against Chinese defendants in U.S. courts under various legal frameworks, though the availability and amount depend on whether the defendant is a private party, a foreign state entity, or falls under specific statutory exceptions. The legal principles governing punitive damages against foreign defendants, including Chinese nationals and entities, derive from common law tort principles, the Foreign Sovereign Immunities Act (FSIA), and constitutional limitations on excessive awards.

Punitive Damages Against Private Chinese Defendants

U.S. courts have awarded punitive damages against private Chinese defendants and companies engaged in fraudulent or wrongful conduct. In a common-law fraud case, a court found that a punitive damages award of \$650,000 was appropriate against defendant companies that falsely represented to an American pharmaceutical manufacturer that pharmaceuticals purchased in Hong Kong were being resold in the People's Republic of China, particularly where the defendants had engaged in similar conduct in prior dealings (Ortho Pharmaceutical Corp. v. Sona Distributors, Inc., 663 F.Supp. 64 (1987))[3]. Similarly, punitive damages were awarded against a company that allegedly preyed on Chinese nationals due to their unfamiliarity with immigration law and desire for U.S. citizenship, with the court finding that this fraudulent misconduct targeting the public evinced a high degree of moral turpitude (Bo Zhang v. North County Beautification Company, Inc., Not Reported in Fed. Supp. (2016))[13]. Courts have also upheld substantial punitive damages awards where discrimination against an employee of Chinese ethnicity and nationality was sufficiently reprehensible, finding a \$2.6 million punitive damages award constitutional under Section 1981 (Zhang v. American Gem Seafoods, Inc., 339 F.3d 1020 (2003))[7].

Foreign Sovereign Immunities Act Considerations

When Chinese defendants are foreign state entities or instrumentalities, the FSIA governs punitive damages availability. Under 28 U.S.C. § 1606, "a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages" ([Bodoff v. Islamic Republic of Iran, 424 F.Supp.2d 74 \(2006\)](#))[2], ([Rimkus v. Islamic Republic of Iran, 575 F.Supp.2d 181 \(2008\)](#))[17]. Courts must evaluate the core functions of the entity to determine its status—if the functions are governmental, the entity is considered the foreign state itself and not subject to punitive damages, but if commercial, the entity is an agency or instrumentality subject to punitive damages ([Estate of Heiser v. Islamic Republic of Iran, 466 F.Supp.2d 229 \(2006\)](#))[8], ([Rimkus v. Islamic Republic of Iran, 575 F.Supp.2d 181 \(2008\)](#))[17]. This categorical approach requires plaintiffs to bear the burden of proving that the entity is commercial rather than governmental ([Rimkus v. Islamic Republic of Iran, 575 F.Supp.2d 181 \(2008\)](#))[17].

Punitive Damages Standards and Amounts

Courts assess punitive damages by considering four factors: the character of the defendant's act, the nature and extent of harm caused or intended, the need for deterrence, and the wealth of the defendant ([Saludes v. Republica De Cuba, 655 F.Supp.2d 1290 \(2009\)](#))[4], ([Calderon-Cardona v. Democratic People's Republic of Korea, 723 F.Supp.2d 441 \(2010\)](#))[15]. In terrorism cases under FSIA, courts typically determine the defendant's wealth by examining annual expenditures in support of terrorist activities, though such information may not be readily accessible for all foreign states ([Kim v. Democratic People's Republic of Korea, 87 F.Supp.3d 286 \(2015\)](#))[11]. Punitive damages awards against foreign defendants have ranged significantly, with courts awarding amounts from \$180,000 in fraud cases ([Bo Zhang v. North County Beautification Company, Inc., Not Reported in Fed. Supp. \(2016\)](#))[13] to \$300 million in terrorism cases ([Kim v. Democratic People's Republic of Korea, 87 F.Supp.3d 286 \(2015\)](#))[11], ([Hilao v. Estate of Marcos, 103 F.3d 767 \(1996\)](#))[12]. Courts have emphasized that punitive damages serve to "punish outrageous behavior and deter such outrageous conduct in the future" rather than to compensate victims ([Warmbier v.](#)

Democratic People's Republic of Korea, 356 F.Supp.3d 30 (2018))[10], ( Calderon-Cardona v. Democratic People's Republic of Korea, 723 F.Supp.2d 441 (2010))[15].

Constitutional Limitations

Punitive damages awards must satisfy constitutional due process requirements to avoid being deemed excessive. Courts consider whether the award is fair in light of the evidence, the financial resources of the defendant, the nature and duration of the conduct, the number of people affected, and the severity of injuries ( Hilao v. Estate of Marcos, 103 F.3d 767 (1996))[12]. The reprehensibility of the defendant's conduct is a key factor in determining whether substantial punitive damages are constitutionally permissible ( Zhang v. American Gem Seafoods, Inc., 339 F.3d 1020 (2003))[7].

In summary, punitive damages against Chinese defendants are available in U.S. courts for private parties and commercial instrumentalities, subject to FSIA limitations for governmental entities and constitutional constraints on excessive awards.

Commentary on This Question

Punitive damages awards against foreign defendants, including Chinese entities, implicate complex enforcement and jurisdictional issues in U.S. courts. Foreign sovereign immunity under the Foreign Sovereign Immunities Act (FSIA) generally protects foreign states from suit unless specific exceptions apply, such as the terrorism exception, where punitive damages may be awarded against foreign states like Iran but are often limited or disallowed if the foreign state's functions are deemed governmental rather than commercial. Enforcement of punitive damages against foreign individuals or corporations is also impacted by comity and public policy considerations; for example, German courts have refused enforcement of U.S. punitive damage awards, citing their penal nature and proportionality principles, although compensatory elements may be enforced if clearly supported (56 Am. Jur. Trials 529 (Originally published in 1995))[19], (77 A.L.R. Fed. 2d 311 (Originally published in 2013))[20].

U.S. Courts will also assess whether procedural requirements for jurisdiction and service are satisfied, with strict adherence to service rules under treaties like the Hague Service Convention. Arbitration awards including punitive damages may be enforced

under the Federal Arbitration Act (FAA) and related international conventions, provided the arbitration procedures meet due process standards and do not violate public policy. However, punitive damages awards can be subject to judicial scrutiny for excessiveness under constitutional due process limits, often guided by factors like reprehensibility of conduct and ratio to actual harm (94 Am. Jur. Trials 211 (Originally published in 2004))[21], (77 A.L.R. Fed. 2d 311 (Originally published in 2013))[20]. Overall, enforcement against foreign defendants hinges on jurisdictional compliance, immunities, public policy, and proportionality considerations.