Bad eggs and oil slicks: Making corporate crime pay

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If courts were able to award appropriate punitive damages that punish wrongdoers at a level tied to a company's financial worth, then businesses big and small would be at risk of being put out of business by punitive damages unconscionable offenses and would be deterred from bad behavior in the first place, according to Judy Feuer Zimet of the Phoenix School of Law in Phoenix, Arizona.

Writing in the *International Journal of Private Law*, Zimet points out that in many legal cases over the last two decades, companies have repeatedly been fined for breaking environmental and other laws, but have not suffered losses to their profit line that were adequate to deter them from repeating offences. She cites the case of Wright County Farm Eggs and owner Jack Decoster's long list of repeated violations that culminated in 2010 with a national salmonella outbreak. She also cites the oil company BP, which since 2005 has been held to account for a staggering 760 safety violations that resulted in a mere $373 million in fines.

Meanwhile, BP's annual profits are in the double figure billions of dollars. The serious oil spill in the Gulf of Mexico in 2010 forced the company to create a $20 billion victims' compensation fund. Zimet suggests that had fines for the 759 prior violations been sufficiently punishing, BP might have been more effective in addressing the problems that led to the 2010 spill.

"A punishment that successfully deters future wrongdoing requires an amount sufficient to impact a defendant's financial condition," says Zimet, Current factors used to assess the amount of punitive damages should be reassessed. Courts can better punish and deter wrongdoing by calculating punitive damages based upon a defendant's wealth rather than the relationship between compensatory and punitive damages."

Zimet discusses two cases in which appropriate punitive damages had the desired effect on changing corporate behavior. Two successive cases against motor vehicle manufacturer BMW of North America saw the company accused of fraud after a customer discovered that it had repainted a car yet withheld that information when the car was sold. In this first case, the trial court awarded a mere $4600 in compensatory damages and BMW made no changes to its behavior. A second case saw BMW North America forced to pay $4 million in punitive damages. The company immediately thereafter changed its policy and began reporting refinishing work to new car purchasers. This shows that when the risk of liability is substantial, companies will reform bad behavior.

"No longer should compensatory damages steer punitive damages," asserts Zimet. "The Supreme Court should replace this factor by a formerly existing factor: determine the financial position of the defendant and its ability to pay."

More information: "Bad eggs and oil slicks: a defendant's wealth is an important factor in properly assessing punitive damages" in Int. J. Private Law, 2011, 5, 1-21

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