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March 17, 2011

Noah H. Charlson
ncharlson@bazless.com**Direct Dial: (215) 609-3147****Direct Fax: (215) 609-3217****VIA HAND DELIVERY AND ECF FILING****Honorable John P. Fullam**
United States District Court for the
Eastern District of Pennsylvania
U.S. Courthouse, Rm. 15614
601 Market Street
Philadelphia, PA 19106-1797**Re: *David Rudovsky & Leonard Sosnov v. West Publishing Corp., et al.***
Civil Action No. 09-cv-727

Dear Judge Fullam:

During yesterday's oral argument, Your Honor referenced Justice Souter's opinion in *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 128 S.Ct. 2605 (2008) (the *Exxon Valdez* case). I explained to the Court that *Exxon Valdez* was expressly decided as a matter of maritime common law, and did not affect the constitutional standards applicable to punitive damages announced in *State Farm* and *Gore*. In other words, *Exxon Valdez* is not a due process case.

I write now to point Your Honor specifically to Justice Souter's language in the *Exxon Valdez* opinion. Justice Souter wrote that:

Today's enquiry differs from due process review because the case arises under federal maritime jurisdiction, and ***we are reviewing a jury award for conformity with maritime law, rather than the outer limit allowed by due process***; we are examining the verdict in the exercise of federal maritime common law authority, which precedes and should obviate any application of the constitutional standard. Our due process cases, on the contrary, have all involved awards subject in the first instance to state law. [Citing, *inter*

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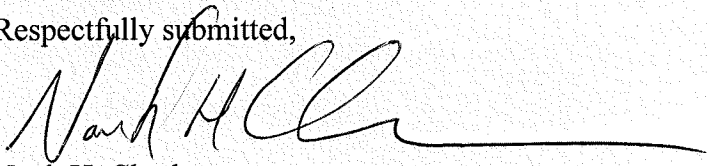
alia, State Farm, Gore, and TXO]. . . . Our review of punitive damages today, then, considers not their intersection with the Constitution, but the desirability of regulating them as a common law remedy for which responsibility lies with this Court as a source of judge-made law in the absence of statute.

554 U.S. at 501-502, 128 S.Ct. at 2626-27 (citations omitted)(emphasis added).

Thus, the Court left no doubt that its decision in *Exxon Valdez* did not, and was not intended to, in any way apply to courts' evaluation of the constitutionality of punitive damage awards rendered under state law. Accordingly, *Exxon Valdez* does not apply to this case.

We appreciate your consideration of this matter.

Respectfully submitted,



Noah H. Charlson

NHC/ayj

cc: James Rittinger, Esq. (via email)