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The Enforcement of Punitive Damages Awards Between United States and Europe: An Introduction for U.S. Practitioners

MARIA VERONICA SALADINO*

Preamble

Punitive damages, also known as exemplary damages, are sums "awarded in addition to actual damages . . . to punish and thereby deter blameworthy conduct."¹ While compensatory damages redress the actual loss that a claimant suffered by a defendant's wrongful conduct, punitive damages operate as "private fines" intended to punish and deter a defendant from committing future civil wrongdoing.²

Whether punitive damages are awarded is largely a function of public policy. For instance, in common law systems, punitive damages fulfill a role critically important for the non-criminal justice scheme: in a society in which a jury of peers is the only finder of fact, punitive damages are an expression of society's moral condemnation.³ In civil law systems, on the other hand, the chief purpose for asserting a non-criminal action is to receive compensation after a loss. Accordingly, for many civil law countries, the idea of reprimand is unknown in the context of civil damages awards; only criminal law—through its due process protections and disinterested prosecutors—can "punish" an individual; the unavailability of punitive damages is a matter of public policy.⁴

In a globalized world, interconnected largely through international transactions, disagreements about punitive damages can no longer be treated merely as a product of history or culture. This difference impacts how (and if) transactional disputes are resolved. When a defendant is foreign, or when a defendant's assets are abroad, U.S.-based attorneys must be aware of the current European trends about the enforcement of United States punitive damages awards when assessing civil litigation strategies. In preparing a litigation plan, lawyers must remain mindful of their clients' primary

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3. Id.
interest: not to obtain a favorable judgment, which is nothing more than a legal fiction, but to secure from that judgment an actual, tangible result that can be obtained only through governmental enforcement mechanisms. Absent the prospect of enforcement, a judgment with no execution is nothing more than an expensive piece of paper.

This article’s objective is to introduce U.S.-based practitioners to European civil-law perspectives on whether U.S. punitive damages awards are enforceable in their jurisdictions. After a brief review concerning the birth of punitive damages within common law, valuable to better understand their cultural and legal significance, this article will outline how the prominent European jurisdictions—France, Germany, Italy, Spain, and Switzerland—have dealt with the enforcement of U.S. punitive damages awards. Through each jurisdiction’s policy principles and relevant law, this article aims to afford U.S.-based practitioners initial tips and litigation strategies about how to maximize their chances of enforcing a U.S.-obtained judgment in one of the analyzed foreign jurisdictions.

I. Brief History of Punitive Damages in the Common Law

Preliminarily, a brief review concerning the birth of punitive damages within the context of tort law is valuable to better understanding both its cultural and legal significance. During English medieval society, criminal law and tort law were inextricably commingled; the legal system did not distinguish between criminal and private actions. The victim of a wrong would seek financial compensation from the wrongdoer in the court of law as an alternative to retaliation and "blood feud." Such compensation, known as "wers" or "bots," was awarded to the victim while an additional payment, known as "wite," was awarded to the community at large. The belief was that every vile behavior caused damage not only to the victim, but also to society as a whole.

Following the XIII century, English law referred to transgressions by one individual against another as "trespass." In its early stages, the writ of trespass was issued when the transgression was a breach of the Crown’s peace—contra pacem nostram. The wrongdoer was ordered to pay a sum to compensate the victim as well as a fine to the Crown for disturbing the peace. Subsequently, around the XVI century, the English legal system sought to separate tort and crime respectively into "trespass" and "felony." Even though a felony was still a "private" criminal action initiated by the victim, the two remedies differentiated as to their underlying motives. If the

6. Id. at 451.
After the XVIII century, punitive damages awards officially entered the law of torts by the infamous decision of Huckle v. Money. There, the court refused a new trial for excessive compensation even though the awarded damages were 300% of the actual loss suffered by the victim. The court explained that only the jury could determine damages, and that a court could not interpose its opinion regarding the calculation of damages in tort cases unless "outrageous." From Huckle forward, punitive awards became standard practice in trespass actions under English common law.

II. Punitive Damages in the United States

Punitive damages were later exported from the English body of common law to the "new world" in the XIX century but not without controversy. For example, the Supreme Court of Wisconsin in Luther v. Shaw dignified the law of exemplary damages as "tend[ing] to . . . discourag[e] private reprisals . . . vindicat[e] the right of the weak, and encourag[e] recourse to, and confidence in, the courts of law by those wronged." In glaring contrast, the Superior Court of New Hampshire in Fay v. Parker overturned a jury award for punitive damages in a civil action and, in support of its ruling, declared that "[d]amage . . . is derived from [the Latin word] demo, to take away; and therefore it is not derived from punio, to punish." As courts throughout the United States tried to formulate their own positions on punitive damages, something in the economy significantly shifted the ball towards the Wisconsin approach: the industrial revolution. In a time of economic growth and industrialization, punitive damages became a means of social control against the careless endangerment of the public by big enterprises and corporations. As this new function of punitive damages against companies grew, civil courts were overwhelmed by corporate tort cases that, for their unprecedented awards, turned out to be the new plaintiffs' El Dorado in the XX and XXI centuries.

In cases of mass-produced consumer goods and company-wide practices, wrongdoing is no longer seen as a harm affecting a single victim; rather, it is considered to be an outrage to society as a whole. As a result, punitive damages awards generally reach well beyond compensatory damage, with the

9. Id. at 84.
11. Id.
12. Luther v. Shaw, 147 N.W. 18, 20 (Wis. 1914).
13. Id.
15. Id.
aim that such exemplary punishment may restrict corporate greed and exploitation in favor of the individual consumer. A landmark case in terms of public opinion was that of *Liebeck v. McDonald’s Restaurants, P.T.S., Inc.*

In *Liebeck*, Stella Liebeck, a 79-year-old woman, sued McDonald’s after spilling freshly purchased hot coffee in her lap and consequently suffering third and second degree burns. Following the accident, Liebeck was hospitalized for eight days, underwent skin grafting surgery, and accumulated $20,000 in medical bills. During the case’s discovery, internal McDonald’s documents revealed that Liebeck was not the first person to be injured by McDonald’s “burning” coffee; the company received more than seven hundred identical complaints yet did absolutely nothing to cure the hazard. In fact, McDonald’s actually required its franchisees to serve coffee at a burning temperature between 180 and 190 degrees Fahrenheit—temperatures capable of causing third-degree burns in only two to seven seconds. At the end of the trial, the jury not only awarded Liebeck $200,000 in compensatory damages but also decided that McDonald’s had to pay Liebeck $2.7 million in punitive damages. About one month after the jury verdict, the judge presiding over the case found the punitive damages awarded to be excessive and ordered a remittitur to reduce the punitive damages to $480,000. But the trend had just started. After *Liebeck*, hundreds of lawsuits sprouted across the country against all major hot-drinks retailers, with an identical case being filed against McDonald’s in England. Each of these cases was not met with the same level of success; a

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21. Id. ¶ 2.

22. Approximately 82 to 88 degrees Celsius.

23. The $200,000 of compensatory damages were reduced by twenty percent as, under the comparative negligence theory, the jury found that Liebeck was twenty percent at fault for the incident. *Liebeck*, 1995 WL 360309, at *1.

24. Id. At the time, this represented two days of McDonald’s coffee sales revenue.


26. Bogle v. McDonald’s Ltd. [2002] EWHC (QB) 490 [33] (Eng.) (“If . . . McDonald’s were going to avoid the risk of injury by a deep thickness burn they would have had to have served tea and coffee at between 55 °C and 60 °C 131 – 140 °F]. But tea ought to be brewed with boiling water if it is to give its best flavour and coffee ought to be brewed at between 85 °C and 95 °C [185 – 203 °F]. Further, people generally like to allow a hot drink to cool to the temperature they prefer. Accordingly, I have no doubt that tea and coffee served at between 55 °C and 60 °C would not have been acceptable to McDonald’s customers. Indeed, on the evidence, I find that the public want to be able to buy tea and coffee served hot, that is to say at a temperature of at least 65 °C, even though they know . . . that there is a risk of a scalding injury if the drink is spilled.”).
vast majority of them were either dismissed or summarily adjudicated prior to jury empanelment.27

Because of Liebeck's controversial result—which is open to many different interpretations28—the case initiated a national debate about the necessity of reform to federal and state tort law. In response, a majority of states limited punitive damages awards to a multiple of the compensatory damages or to a fixed amount.29 Only five states—Louisiana, Massachusetts, Nebraska, New Hampshire, and Washington—totally banned or considerably restricted such damages. Other states, including Indiana and Oregon, decided to limit the amount of punitive damages awards while simultaneously allocating only a small percent of those damages to plaintiffs and leaving the remaining percentage to public interest funds.30

In 1995, the U.S. Supreme Court joined the debate on punitive damages when it decided to grant certiorari in the case of BMW of North America, Inc.

27. See, e.g., Moltner v. Starbucks Coffee Co., No. 08 CIV. 9257 (LAP), 2009 WL 3573190 (S.D.N.Y. Oct. 23, 2009) (Starbucks sued over hot tea temperature); McMahon v. Starbucks's Coffee, 2005 WL 3309939 (N.J. Super. Ct. App. Div. Dec. 8, 2005) (per curiam) (Starbucks sued over hot coffee temperature); McCroy ex rel. McCroy v. Coastal Mart, Inc., 207 F. Supp. 2d 1265 (D. Kan. 2002) (Coastal Market sued over hot chocolate temperature); Nadel v. Burger King Corp., 119 Ohio App. 3d 578, 591 (1997) (Burger King sued over hot coffee temperature); Greene v. Boddie-Noell Enterprises, Inc., 966 F. Supp. 416, 419 (W.D. Va. 1997) (Hardee's sued over hot coffee temperature). In the great majority of these cases, courts systematically granted defendants' motion for summary judgment and a jury was never empaneled. See, e.g., Moltner, 2009 WL 3573190, at *10. (granting Starbucks' motion for summary judgment on the basis that Plaintiff's familiarity with Starbucks' hot tea and her admission that the cup contained a printed warning that the tea was "extremely hot" demonstrated that Plaintiff expected or reasonably should have expected that the tea could burn her).

28. Mark B. Greenlee, Kramer v. Java World: Images, Issues, and Idols in the Debate over Tort Reform, 26 CAP. U. L. REV. 701, 729 (1997) (citing 141 Cong. Rec. H2661 (Mar. 6, 1995) (statement of Rep. Goss) ("I would guess that most Americans probably agree that the $3 million judgment recently awarded to a woman who spilled hot coffee in her lap was unreasonable. While the plaintiff in that case, and likely her lawyer too, now may rest comfortably on that judgment, the rest of America can expect to pay more for lukewarm coffee in the future") and 141 Cong. Rec. S5956 (May 2, 1995) (statement of Sen. Hollings) ("Just like the McDonald's coffee case. Once we searched that out, we found out, yes, there were third-degree burns over one-sixth of the injured woman's body, three weeks in the hospital. After 700 calls and an offer to settle for $20,000, they totally ignored it and said we put this in the cost of the product, because the hotter we make the coffee, the more coffee we produce. It is money, money that concerns these manufacturers on product liability.")

29. See, e.g., COLO. REV. STAT. § 13-21-102 (2003); FLA. STAT. § 768.73(1)(b) (2019); IND. CODE §34–51–3–6 (2007); KAN. STAT. § 60–3701 (1988); NEV. REV. STAT. § 42.005(1) (1995); N.J. STAT. § 2A:15–5.14(b) (2006); N.C. GEN. STAT. § 1D-25(b) & (c) (1995); OKLA. STAT. tit. 23, § 9.1 (2002); TEX. CIV. PRAC. & REM. CODE ANN. § 41.008(b) (West 2009); VA. CODE ANN. § 8.01-38.1 (West 2019).

In *Gore*, the respondent Dr. Gore brought suit against BMW when he noticed that the brand-new car that he purchased had been repainted. In his suit, Dr. Gore asserted that his repainted car was worth less than a car that had not been refinished. During trial, BMW acknowledged it had adopted a nationwide policy of selling repaired cars as new so long as the repair costs did not exceed three percent of the suggested car retail price. Furthermore, BMW acknowledged that it engaged in these practices without disclosing them to dealers.

Following a trial, the jury awarded Dr. Gore $4,000 in compensatory damages and $4 million in punitive damages; in its decision, the jury concluded that BMW's nationwide nondisclosure policy constituted "gross, oppressive or malicious" fraud. Even though the Alabama Supreme Court reduced the punitive damages by half, to $2 million, the U.S. Supreme Court overturned the jury award, holding that it was in violation of the Due Process Clause of the Fourteenth Amendment as "grossly excessive." The Supreme Court then went on to establish a three factor test for determining whether a punitive damages award is unconstitutional: (1) the reprehensibility of then defendant's conduct; (2) the proportion between punitive damages and compensatory damages; and (3) the size of civil or criminal penalties normally imposed for comparable misconduct.

In short, since the adoption of punitive damages in the U.S. common law system, jurisdictions have addressed exemplary punishment in various degrees. Some have openly embraced the concept, while others have stuck it down. Despite the intrastate controversy, a larger and more critical issue appears ahead—whether locally awarded punitive damages are enforceable abroad.

III. The Problem of Enforcing U.S. Punitive Damages Awards in European Civil Law Jurisdictions: A Comparative Analysis

When assessing civil litigation strategies, U.S. plaintiffs' attorneys typically file actions in the specific forum that they believe will better enable them to carry out the litigation. When the defendant is foreign, however, or

33. Id. at 564.
34. Id. at 563 – 64.
35. Id. at 564.
36. Id. at 565.
38. Id. at 575.
39. This element is further analyzed in State Farm Mutual Automobile Insurance Co. v. Campbell. See 538 U.S. 408, 424 – 25 (2003) (noting that "single-digit" ratios are "more likely to comport with due process" but declining to "impose a bright-line ratio" at which a punitive damage award becomes unconstitutional).
when the defendant does not have assets in the same jurisdiction as the plaintiff, the decision about where to file the action and what specific type of judgment to seek must be given very careful consideration. In fact, even though it may appear like a straightforward process, the enforcement of a judgment in a foreign country entails a high level of complexity and risk; sometimes, even strict compliance with administrative or judicial processes does not guarantee the result sought. In preparing a litigation strategy, an attorney must always remain mindful that the real objective of his or her representation is not to obtain a piece of paper—i.e., the judgment—but to secure for his or her client a tangible result that only a governmental enforcement mechanism can achieve.

In the context of the law of torts, most of the European Union countries have shown bitterness towards the enforcement of U.S. punitive damages awards. In the majority of these countries, notions around civil responsibility are based on the principle of 

\[ \text{restitutio in integrum to the status quo ante.} \]

This principle, also confirmed by the European Group of Tort Law, is an expression of the European framework of 

\[ \text{ius commune}, \]

the core juridical principles shared by all European countries (except England) and developed between the re-discovery of the Justinian code, 

\[ \text{Corpus Iuris Civilis}, \]

in the XI century and the modern codifications of the XIX century. In this framework, "compensation" means restoration to a preexisting situation that has been wrongfully changed, while "full" means that the quantum is based on the loss suffered and nothing more. For this reason, many challenges arise when European civil law courts are asked to enforce U.S. judgments that include punitive damages. The most widely encountered challenge is the one that relates to that country's internal public policy; in fact, domestic courts are generally required not only to examine the procedural and substantive component of the foreign judgment, but also to assess if the enforcement is compatible with policies and principles of the domestic law. As a result, under the public policy exception, courts can refuse to recognize an otherwise legitimate foreign judgment.

Even though the tort law framework is harmonious among European countries, attorneys must know that every country in Europe is unique; they bear different, although similar, traditions and values. In some of these countries, private penalties are not entirely absent, and enforcement of U.S. punitive damages awards is, under certain circumstances, not entirely

\[ \text{41. This phrase translates as "restitution to the original condition." This principle implies that damages in civil actions have the ultimate goal of putting the victim into a position as close as possible to the one before the damages occurred.} \]

\[ \text{42. Article 10:101 states that "[d]amages are a money payment to compensate the victim, that is to say, to restore him, so far as money can, to the position he would have been in if the wrong complained of had not been committed." Bernhard A. Koch, The "European Group on Tort Law" and Its "Principles of European Tort Law," 53 AM. J. COMP. L. 189, 203 (2005) (reproducing the "Principles of European Tort Law" in their entirety as an appendix).} \]

\[ \text{43. Baldoni, supra note 17.} \]

\[ \text{44. Thomas Rouhette, The Availability of Punitive Damages in Europe: Growing Trend or Nonexistent Concept?, 74 DEF. COUNS. J. 320, 324 (2007).} \]
despised. Moreover, the absence of an international framework on the mutual recognition of judgments between U.S. and any European country leaves the enforcement of U.S.-rendered decisions subject to each country's private international laws. To assist a U.S.-based practitioner who is considering litigation strategies that involve the possibility of foreign enforcement of a judgement, this article will examine principles and relevant law related to U.S. punitive damages in the major European civil law jurisdictions.

A. FRANCE

Under the French Code civil, damages for contract or tort claims are typically limited to restoration.\(^{45}\) France, however, is one of the few civil law systems where in limited circumstances civil penalties may be imposed. For example, several articles in the Code de procédure civile,\(^ {46}\) the Code de la propriété intellectuelle,\(^ {47}\) and the Code de commerce,\(^ {48}\) provide the payment of an amende civile (a "civil fine") to the Public Treasury,\(^ {49}\) in addition to compensatory damages awarded to the victim.\(^ {50}\) Differently from common law punitive damages, the sum awarded as amende civile is given to the community and not to the victim, but the mere fact that such award is contemplated in civil lawsuits is perhaps the reason why French courts have not been too reluctant to accept the concept of punitive damages.

Before discussing whether French courts recognize U.S. punitive damages awards, it is necessary to make a brief diversion to when foreign judgments are actually enforceable in France. Under article 15 of the Code civil, French courts have exclusive jurisdiction over French defendants, even for disputes that originated outside France.\(^ {51}\) In accordance with article 15, for over a century, the enforcement of foreign judgments was limited to rulings deemed "correct" under French law.\(^ {52}\) Starting in 1964, however, the Cour de cassation\(^ {53}\) (the "Cour") began to defer to foreign courts' judgments in

\(^{45}\) CODE civn. [C. civ.] [CIVIL CODE] art. 1240 (Fr.) (emphasis added) ("Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.").

\(^{46}\) "Code of civil procedure."

\(^{47}\) "Code of intellectual property."

\(^{48}\) "Code of commerce."


\(^{51}\) CODE civn. [C. civ.] [CIVIL CODE] art. 15 (Fr.).


\(^{53}\) The Cour de cassation is the highest court in France. See L'institution, COUR DE CASSATION, https://www.courdecassation.fr/institution_1/ (last visited Aug. 6, 2019).
Munzer v. Munzer,54 Bachir v. Bachir,55 and Simitch v. Fairhusrt.56 Finally, in 2006 and 2007, the Cour overruled prior case law57 and held in Prieur v. de Montenach58 that article 15 did not give French courts exclusive jurisdiction over French defendants and affirmed in Cornelissen v. Avianca Inc.59 that a foreign judgment is enforceable when (1) the foreign court has jurisdiction; (2) the judgment conforms with French ordre public; and (3) the foreign judgment has not been obtained for the sole purpose of avoiding the applicable law.60

In 2010, the Cour finally issued an opinion that specifically addressed the enforcement of U.S. punitive damages in Schlenzka & Langhorne v. Fountaine Pajot S.A.61 In Fountaine Pajot, Peter Schlenzka and Julie Langhorne, both California residents, purchased a “like new” fifty-six-foot catamaran made by a French manufacturer, Fountaine Pajot S.A.62 After delivery, the purchasers realized that the boat’s structural integrity was compromised and discovered that Fountaine Pajot had concealed not only that the catamaran had been severely damaged in a storm that struck the port of La Rochelle, where it was manufactured, but also the extent of the subsequent repairs.63 As the purchase agreement established jurisdiction and venue as the State of California, Schlenzka and Langhorne sued Fountaine Pajot in California64 and, after the initial resistance to California’s jurisdiction, Fountaine Pajot did not comply with plaintiff’s discovery requests and did not participate in the trial.65 At the end of the proceedings, the California trial court rendered a judgment in favor of Schlenzka and Langhorne for, inter alia, $1,391,650 in actual damages and $1,460,000 in punitive damages.66 To recover the sum awarded, Schlenzka and Langhorne took the judgment against the French defendant to France. After the lower court refused to enforce the

57. “Overruled prior case law” here has the meaning of “changed its position.” France is a civil law system and, as such, it does not have “case law” that can be “overruled.”
60. Id.; see also Benjamin West Janke & François-Xavier Licari, Enforcing Punitive Damage Awards in France After Fountaine Pajot, 60 AM. J. COMP. L. 775, 789 (2012).
62. Janke & Licari, supra note 60, at 781.
63. Id.
64. Id.
65. Id. at 782.
66. Id.
judgment and the court of appeals held that the punitive damages award violated international public policy, the case went all the way to the Cour de cassation. In its opinion, the Cour recognized that “the [U.S.] concept of . . . punitive damages is not, per se, contrary to [French] public policy.” Nevertheless, the Cour found that the punitive damages awarded to Schlenzka and Langhorne by the U.S. court violated the French ordre public because it was “disproportionate” to the actual injury suffered. Ultimately, the Cour refused to enforce the award.

Even though the Cour did not enforce the U.S. punitive damages awarded in Fountaine Pajot, it is undisputed that the case represents a landmark decision in the European legal framework. After Fountaine Pajot, sums allocated as punitive damages are not unenforceable in France per se, but cannot be enforced when their amount is disproportionate to damages actually suffered. Regrettably, the Cour did not articulate specific criteria on how to determine the excessiveness of a foreign award; lower courts are now left to speculate as to when punitive damages are disproportional, and in their arbitrary decisions, foreign litigants are left with uncertainty. Given the developments in case law just discussed, a U.S. plaintiff seeking a judgment against a French defendant might consider asking at trial for a low amount of punitive damages to try to make the sum as “proportional” as possible when compared to compensatory damages.

B. GERMANY

The German legal system is unfriendly to U.S. plaintiffs trying to enforce a punitive damages award. In Germany, tort law allows only for compensatory damages even in cases of intentional torts, and commentators consider the U.S. punitive damage system absurd and excessive. This general aversion to punitive damages is codified in Title twenty-seven of the Bürgerliches Gesetzbuch (“BGB”). Specifically, section 823 of Title twenty-seven of the BGB—adopting the principle of exclusivity of compensatory damages—prescribes that, for claims governed by internal law, “[a] person who, intentionally or negligently, unlawfully injures . . .

67. Tribunaux de grande instance [TGI] [ordinary court of original jurisdiction] Rochefort, Nov. 12, 2004, 03/01276 (Fr.).
68. Cour d'appel [CA] [regional court of appeal] Poitiers, 1e civ., Feb. 26, 2009, 07/02404 (Fr.).
70. Id.
71. Id.
72. BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], Jan. 2, 2002, BGBl. I at 42, §§ 823, 826 (Ger.).
74. Id. at 642.
another person is liable to make compensation to the other party for the
damage arising from this."75

In the context of private international law, however, German law seems to
be more flexible regarding the amount of damages that can be recognized.
For example, article 40(3) of the Einführungsgesetz zum Bürgerlichen
Gesetzbuche ("EGBGB")76 establishes that, in cases where private
international law is involved, "[c]laims governed by the law of another
country cannot be raised insofar as they: (1) go substantially beyond what is
necessary for an adequate compensation of the injured party; [or] (2) obviously
serve purposes other than an adequate compensation of the injured party."77
In restricting the type of claims that can be asserted in German courts, the
text of article 40(3) appears to allow German courts to award damages that
are (1) beyond what is necessary for an adequate compensation, as long as it
not substantially beyond; and (2) serving purposes other than compensation,
so long as it is not obvious.78 In adopting such a literal interpretation,
however, a practitioner must remain mindful that what "substantially
beyond" or "obvious" means is for the courts to interpret. In fact, when
German courts are going to preside over claims brought under foreign law,
they are going to interpret the EGBGB provisions in accordance with
Germany's traditional ideas of compensation.79

Even with the apparent "openings" of the German system to awards
beyond strict compensation,80 for reasons of public policy, German courts
have not enforced U.S. judgments that included punitive damages. The
public policy exception to the recognition of foreign judgements is codified
by the German domestic enforcement laws in section 328. of the
Zivilprozessordnung ("ZPO").81 Section 328 provides that, inter alia, "[the]
recognition of a judgment handed down by a foreign court shall be ruled
out if . . . [such] recognition . . . would lead to a result that is obviously
incompatible with essential principles of German law."82 This section has

75. BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], Jan. 2, 2002, BGBl. I at 42, §§ 823,
826 (Ger.) (emphasis added).
76. Einführungsgesetz zum Bürgerlichen Gesetzbuche [EGBGB] [Introductory Act to the
Civil Code], Sept. 21, 1994, BUNDESGESETZBLATT I [BGBl. I] at 20, 2494, art. 40, (Ger.),
englisch_bgbeg.pdf (last visited Aug. 6, 2019).
77. Id. (emphasis added).
78. But see Volker Behr, Myth and Reality of Punitive Damages in Germany, 24 J.L.
& COM. 197, 201 (2004).
79. See Id.
80. Einführungsgesetz zum Bürgerlichen Gesetzbuche [EGBGB] [Introductory Act to the
Civil Code], Sept. 21, 1994, BUNDESGESETZBLATT I [BGBl. I] at 20, 2494, Art. 40, (Ger.),
englisch_bgbeg.pdf (last visited Aug. 6, 2019).
81. ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], BUNDESGESETZBLATT I
[BGBl. I] at 10, 3786, § 328, para. 1, sentence 4, (Ger.), translated in GESETZE IM INTERNET,
82. Id.
been applied by the Bundesgerichtshof\textsuperscript{83} in case law involving the enforcement of U.S. punitive damage awards. For example, in the pivotal case of \textit{John Doe v. Smith},\textsuperscript{84} the Bundesgerichtshof held that a U.S. judgment awarding more than compensatory damages was unenforceable because it was incompatible with German \textit{ordre public}.\textsuperscript{85} In \textit{John Doe}, the defendant—a citizen of both the United States and Germany—had previously been found guilty and sentenced to prison in California for sexual abuse committed on the plaintiff.\textsuperscript{86} After the criminal trial, the victim-plaintiff started a civil tort action in California, but, while the civil action was still pending, the defendant fled to Germany leaving no property in California.\textsuperscript{87} At the civil trial, to which the defendant did not appear, the California court entered a judgment in favor of the plaintiff for $750,260 ($150,260 for medical expenses, $200,000 for pain and suffering, and $400,000 as punitive damages); at that point, the only issue was collecting the award overseas.\textsuperscript{88}

At first, the amount of the award did not seem at issue when the plaintiff requested the German courts to enforce the judgment: the lower court, the \textit{Landesgericht},\textsuperscript{89} considered the award enforceable in its entirety.\textsuperscript{90} However, on appeal, the middle court, the \textit{Oberlandesgericht},\textsuperscript{91} reduced the enforceable amount from $750,260 to $265,325 because it deemed the award “excessive” under German public policy.\textsuperscript{92} Lastly, the highest court, the \textit{Bundesgerichtshof},\textsuperscript{93} appraised the enforceable amount at $350,260 (the amount awarded by the court in California minus the punitive damages portion). In its concluding opinion, the \textit{Bundesgerichtshof} explained that, even if alien compensatory damages awards exceed what a German court would have awarded in the case “[they are] nevertheless to be recognized.”\textsuperscript{94}

\textsuperscript{83} The \textit{Bundesgerichtshof} is Germany’s highest court of civil and criminal jurisdiction sometimes also referred as the “German Supreme Court” or “Federal Court of Justice.” See \textit{Der Bundesgerichtshof}, https://www.bundesgerichtshof.de/EN/Home/homeBGH_node.html;sessionid=3537F2C42D8FS5CBBDB0B371737094A6E.2_cid294 (last visited Nov. 28, 2016).


\textsuperscript{85} Hay, supra note 84.

\textsuperscript{86} Fiebig, supra note 73, at 647.

\textsuperscript{87} Id.


\textsuperscript{89} Germany’s Regional Courts (Lower Courts).

\textsuperscript{90} Landesgericht [LG] [Regional Court] Apr. 12, 1990, 13 O 456/89 (Ger.).

\textsuperscript{91} Germany’s Higher Regional Courts (Courts of Appeals).

\textsuperscript{92} Oberlandesgericht [OLG] [Higher Regional Court] May 28, 1991, OLG 37 RIW 594. See Fiebig, supra note 73, at 647.

\textsuperscript{93} Der Bundesgerichtshof, supra note 83.

\textsuperscript{94} Hay, supra note 84; see also Fiebig, supra note 73.
Punitive damages, however, could not be enforced, as they violate Germany's *ordre public.*

The court highlighted that German civil law provides only for the compensation of damages as a legal consequence of tortious conduct and not for the enrichment of the injured party. Also, the court found that the enforcement of the punitive damages would have been excessive, as the sum allocated by the California court for punitive damages was higher than the one allocated for compensatory damages. This part of the opinion might lead one to think that the *Bundesgerichtshof* did not refute *in toto* the concept of punitive damages but that it considered a ratio of 1:1 between punitive and compensatory damages as the limit allowed by German public policy. It is not clear if the court intended to create an exception to the unenforceability of punitive damages awards or if its intention was merely to further support the conclusion that punitive damages *per se* violate Germany's *ordre public.*

C. **ITALY**

Italy, of all the European countries, is perhaps the most hostile to U.S. practitioners that seek to enforce punitive damages awards. The Italian tort law system is based on the principle of *danno effettivo,* according to which an individual can only recover damages actually suffered. In more detail, the fundamental source of tort law in Italy, article 2043 of the *Codice civile,* provides that "any act malicious or unintentional, that causes to another an unfair damage, obligates the person who committed the act to compensate the damage." The principles of *danno effettivo* and strict compensation, however, should not lead one to the conclusion that in Italy the only damages recoverable are the material ones. To the contrary, Italian courts have long established that sums for *danni non patrimoniali* are also recoverable but only in cases where they are specifically provided for by the law.

The Italian system also recognizes some types of "private sanctions," but only as penalty clauses in contracts. For example, article 1382 of the *Codice civile* allows the parties to a contract to insert a "*clausola penale*"—a clause

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95. Hay, *supra* note 84.
96. *Id.* at 746.
97. *Id.* at 731.
99. "Actual damage."
100. "Italian Civil code."
101. Art. 2043 Codice civile (C.c.) (It.) (emphasis added) ("Qualunque fatto doloso o colposo, che cagiona ad altri un danno ingiusto, obbliga colui che ha commesso il fatto a *risarcire* il danno.").
102. "Non-patrimonial damages."
103. Art. 2059 C.c.
104. "Penalty clause."
that pre-establishes the sanctions if a future breach occurs. The existence of penalty clauses in the Italian legal system allows the parties to a contract to regulate their regime of compensation in case of breach. As the damages resulting from a breach are pre-established in the "clausola penale," article 1382 aims to discourage future litigation among the parties and to confer a psychological element of "inevitability" of the sanction to help prevent future breaches.

As to the enforcement of foreign decisions, articles 64 and 67 of the Riforma del Sistema Italiano di Diritto Internazionale Privato provide for automatic recognition and enforcement of foreign judgments if certain conditions, including the judgment's compliance with the Italian ordine pubblico, are met. The first case where the Corte di Cassazione specifically addressed the enforcement by Italian courts of U.S. punitive damages awards is Parrott v. Fimez. The Parrott case started when a car hit motorcyclist Kurt Parrott in 1985 in Opelika, Alabama. In the impact, the buckle of Parrott's helmet, manufactured by the Italian company Fimez S.p.A., broke, and Parrott died immediately as his unprotected head hit the roadway. After Parrott's death, his mother, Judy Glebosky, sued in Alabama all the individuals involved in the accident and then settled with all defendants except Fimez. The Alabama court found that Fimez was responsible for Parrott's death and ordered Fimez to pay $1 million in damages to Glebosky. The court, however, did not specify what part of the award was compensatory and what was punitive.

When Fimez refused to pay, Glebosky brought the judgment to Italy to obtain enforcement. At first, the Corte d'Appello di Venezia refused to enforce the award finding that the award violated Italian public policy as

105. Art. 1392 C.c.
106. "Foreign decisions" here means judgments issued by courts outside of the European Union.
108. The text of article 64 does not specify whether 'ordine pubblico' refers only to internal Italian public policy or also to international public policy. See Alessandro Barzaghi, Recognition and Enforcement of United States Judgments in Italy, 18 N.Y. INT'L L. REV. 61, 92 (2005).
109. The "Court of Cassation" is Italy's Supreme Court.
113. Ostoni, supra note 111.
114. Id.
115. Id.
116. Id.
punitive in nature. In particular, because the original U.S. judgment did not specify the nature of the damages awarded, the Venetian court concluded that the award was punitive based on: (1) "the lack of rationale on the liability issue"; (2) "the remarkable amount of the compensation ($1,000,000)"; (3) "the impossibility to set-off such compensation in regard to the amounts paid by the original defendants pursuant to the settlement agreement"; and (4) "the fact that the wrongdoer was the manufacturer."

On appeal, the Cassazione affirmed the lower court and explained that a punitive damages award is contrary to Italian public policy because private lawsuits should have the sole goal of compensation. In addition, the Cassazione clarified that, even though the Italian legal system is familiar with "penalty" instruments like the clausola penale, their primary goal is never to sanction or punish but to strengthen the existing privity of contract and determine in advance the amount to pay in case of breach.

Parrott's principles were also utilized by the Cassazione in its second decision on U.S. punitive damages, Soc. Ruffinatti v. Oyola-Rosado. In Soc. Ruffinatti, the Italian court was asked to enforce a Massachusetts judgment ordering Ruffinatti, an Italian company, to pay $8 million in favor of Oyola-Rosado, an employee injured in an accident taken place inside Ruffinatti's U.S. subsidiary. Similarly to the Alabama judgment in Parrott, the Massachusetts verdict in Soc. Ruffinatti did not specify what part of the award was compensatory and what was punitive and awarded an extremely large amount of money ($8 million) when compared to the actual damages suffered ($330,677). In its opinion, the Cassazione confirmed its position against punitive damages and concluded that the Soc. Ruffinatti award, being punitive in nature, was unenforceable as contrary to Italian public policy.

Recent developments, however, might lead one to believe that the Cassazione is reconsidering its position. On May 16, 2016, the First Section of the Cassazione issued a decision that may result in Italian recognition of U.S. punitive damages. In the May pronouncement, the First Division challenged the precedent established in Parrott and Soc. Ruffinatti, questioning whether the single internal principle of mere compensation in civil actions is protected by public policy. In particular, the decision pointed out that the concept of "public policy," mentioned by article 64 of

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118. Id.
120. Art. 1382 C.c.
123. Id.
124. Id.
125. Id.
127. Utilized as "previous decisions" and not as "precedent with legal binding authority."
Italian private international law,\textsuperscript{129} regarding the recognition of foreign judgments should not include every single Italian ordinary law but should be construed to express a broader concept of internal constitutional and international fundamental principles.\textsuperscript{130} Additionally, the May pronouncement requested the President of the Cassazione to assign the matter to the Joint Section of the Court for a final decision.\textsuperscript{131} As of the time of writing this article, it is not known when (and if) the Joint Section will issue a decision on the matter, nor it is possible to guess what its final decision will be.

D. SPAIN

In Spain, punitive damages are not part of civil liability awards.\textsuperscript{132} Nevertheless, the concept of punitive damages is not completely extraneous to the Spanish legal system. To this, Spanish courts have occasionally enforced U.S. rulings that included punitive damages, as in the case of \textit{Miller Import Corp. v. Alabastres Alfredo, S.L.}\textsuperscript{133} In \textit{Miller Import}, a U.S. corporation and an Italian corporation—Miller Import Corp. and Florence S.R.L.—filed an action in U.S. federal court for the unauthorized use of intellectual property, violation of a registered trademark, and unfair competition against a Spanish company—Alabastres Alfredo, S.L.\textsuperscript{134} At trial, the federal U.S. court entered a judgment against Alabastres and conferred Miller and Florence compensatory as well as punitive damages.\textsuperscript{135} Alabastres refused to pay after the judgment, and Miller and Florence brought the dispute to Spain to try to recover the award. With great surprise to many European commentators, the \textit{Tribunal Supremo}\textsuperscript{136} decided to enforce the U.S. judgment against Alabastres in its entirety and clarified that the U.S. concept of punitive damages was not completely antithetical to Spanish public policy.\textsuperscript{137}

To further explain its decision, the \textit{Tribunal Supremo} noted that Spanish law in fact permits some overlap between criminal and civil law when it permits “moral damages” and stated that the line separating punitive from moral damages is often very difficult to draw.\textsuperscript{138} The concept of punitive damages, the tribunal said, can be related to the Spanish criminal doctrine of “minimal

\begin{thebibliography}{99}
\bibitem{130} Cass., I sez., 16 maggio 2016, n. 9978.
\bibitem{131} \textit{Id.}
\bibitem{132} Scott R. Jablonski, \textit{Translation and Comment: Enforcing U.S. Punitive Damages Awards in Foreign Courts - A Recent Case in the Supreme Court of Spain}, 24 \textit{J. L. \\& COM.} 225, 229 (2005).
\bibitem{133} S.T.S., Nov. 13, 2001 (No. 2039/1999), translated in Jablonski, \textit{supra} note 132.
\bibitem{135} \textit{Id.}
\bibitem{136} The highest court in all legal matters with the only exception of constitutional rights, which are monitored by the Constitutional Court. \textit{Tribunal Supremo}, \textit{EUROPEAN LAW INST.}, http://www.europeanlawinstitute.eu/membership/institutional-observers/supreme-court-of-spain/ (last visited Nov. 14, 2016).
\bibitem{137} See Jablonski, \textit{supra} note 132, at 229.
\bibitem{138} See Gotanda, \textit{supra} note 134, at 521.
\end{thebibliography}
intervention."139 Through this doctrine, by virtue of which the punitive activity of a State should be kept to the indispensable minimum, the idea of civil punitive damages as a reduction of the criminal law's area of intervention is in complete harmony with the Spanish civil system.140

Although Miller Import is definitely a rare and important example of recognition of U.S. punitive damages in Europe, the case should not be read as Spain's final stance on the issue. Indeed, many parts of the Miller Import opinion focus on the fact that the case was about intellectual property. In particular, the Tribunal Supremo noted that intellectual property rights are special interests “a cuya tutela y salvaguardia están notoriamente orientados en el marco de una economía de mercado, relevancia no estrictamente local, sino de general y universal apreciación en los Estados que participan de similares concepciones jurídicas, sociales y económicas.”141 For the court, intellectual property rights are fundamental for countries that enjoy a global economy, like Spain and the United States, and as such have to be protected not only locally but also at a larger scale.142 As there are no other opinions on the enforcement of U.S. punitive damages by the Tribunal Supremo, it is safer to assume that the Miller Import decision was based on the importance Spain grants to intellectual property rights, and that the outcome might not be the same with another type of interest at stake.

E. SWITZERLAND143

Similar to the other countries previously examined, punitive or exemplary damages are not part of the calculation of damages for civil liability in Switzerland.144 There are, however, some provisions in the Swiss Obligationenrecht (“OR”)145 that can resemble private penalties. Specifically, article 160 of the OR authorizes parties to stipulate in their contract a “konventionalstrafe”146 for possible non-performance or bad performance.147

140. Id.
141. Id. at 7 (“whose protection and safeguard are particularly relevant in the context of a market economy, a relevance not only strictly local, but of general and universal appreciation in the States participating in similar legal, social and economic conceptions”).
142. Id.
143. Even though Switzerland is not part of the European Union, its position on punitive damages is here discussed in virtue of Switzerland’s special relationship with the European Union and its geographical position. See generally Yves P. Piantino, Recognition and Enforcement of Money Judgments Between the United States and Switzerland: An Analysis of the Legal Requirements and Case Law, 17 N.Y.L. Sch. J. Int’l & Comp. L. 91 (1997).
144. CHRISTIAN LENZ, 77 AMERIKANISCHE PUNITIVE DAMAGES VOR DEM SCHWEIZER RICHTER 87 (1992).
145. “Code of Obligations.”
146. OBLIGATIONENRECHT [OR] [CODE OF OBLIGATIONS], Mar. 30, 1911, art. 160 (Switz.) (“Penal Clause.”).
147. Id.
In addition, article 336a and 337c assign a payment worth up to six-months salary to any employee that was dismissed without good cause.\(^\text{148}\) On the subject of enforcement of U.S. judgments, there is currently no treaty that regulates the reciprocal enforcement of judgments among the two countries. As a result, the recognition and enforcement of U.S. tort decisions in Switzerland is left to articles 25, 27, and 149 of the internal Bundesgesetz über das Internationale Privatrecht ("IPRG").\(^\text{149}\) Under article 25, Swiss courts will recognize a foreign judgment if (1) the foreign court had jurisdiction over the matter; (2) the judgment is final; and (3) no grounds for non-recognition exist under article 27.\(^\text{150}\) In turn, article 27(1) establishes that a foreign decision must be denied recognition if, *inter alia*, such decision is manifestly incompatible with Swiss public policy.\(^\text{151}\) This fundamental public policy clause sets the standard under which a Swiss court can decide whether or not to recognize punitive damages awarded by a foreign country.\(^\text{152}\)

In their jurisprudence, Switzerland courts have reached different—although consistent in their principles—outcomes. In 1982, a Court of First Instance\(^\text{153}\) in the canton of St. Gallen refused to enforce a Texas district court judgment containing punitive damages amounting to triple the compensatory damages.\(^\text{154}\) The court held that the judgment was against public policy, as, in its opinion, it was not based on the loss actually suffered by the damaged party.\(^\text{155}\) To the contrary, in 1990 the Tribunal Fédéral\(^\text{156}\) in *T.C.S. SA. v. S.F., Inc.*\(^\text{157}\) affirmed the lower court’s decision to enforce a California’s punitive damage award.\(^\text{158}\) In *T.C.S.*, a Swiss corporation had a contract to transport containers on behalf of S.F., Inc., a California corporation.\(^\text{159}\) When S.F. fell behind in payments, T.C.S. started selling

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\(^{148}\) Id. arts. 336a, 337c.

\(^{149}\) "Federal Code on Private International Law."


\(^{151}\) Id. art. 27(1).

\(^{152}\) Piantino, *supra* note 143.

\(^{153}\) "A district court or lower district court (variously called Bezirksgericht, Amtsgericht, Kreisgericht[,] etc. depending on the canton) adjudicates cases as the court of first instance. Its jurisdiction also extends to certain matters falling under divorce, family, property and succession law as well as the Code of Obligations." *The Paths to the Swiss Federal Supreme Court: An Outline of Switzerland’s Judicature Structure*, BGER, http://www.bger.ch/wege_zum_bundesgericht_e.pdf (last visited Dec. 18, 2016).

\(^{154}\) Lenz, *supra* note 144, at 176; *see* Piantino, *supra* note 143, at 127; *see also* Gotanda, *supra* note 134.

\(^{155}\) Lenz, *supra* note 144, at 176; *see* Piantino, *supra* note 143, at 127; *see also* Gotanda, *supra* note 134.

\(^{156}\) Switzerland Federal Supreme Court.

\(^{157}\) *T.C.S. SA. v. S.F., Inc.*, Tribunal Fédéral [TF] [Federal Supreme Court], Jul. 12, 1990, Arrêts du Tribunal Fédéral Suisse (Recueil Officiel) [ATF] II 376 (Switz.).

\(^{158}\) Id.

\(^{159}\) Id.; *see* Piantino, *supra* note 143, at 127.
some of S.F.'s cargo containers or used them in deals with other clients. T.C.S then sued in California for the missing payments, but S.F. filed a counterclaim for T.C.S.'s unauthorized use of S.F.'s cargos. After a trial, the California court ordered the Swiss company T.C.S. to pay $120,060 in compensatory damages and $50,000 in punitive damages to S.F.

When S.F. brought the judgment to Switzerland, the Swiss lower court decided for the enforcement of the whole sum, even including a punitive part. In its reasoning, the lower court established that the punitive damage award was enforceable and did not collide with Swiss public policy because (1) the Swiss legal system had civil "punitive" instruments; and (2) the punishment part of the California award was only "secondary," as its purpose was to force the defendant to restitute the unjust profit realized. On appeal, both the intermediate court and the Tribunal Fédéral supported the conclusion and reasoning of the lower court.

Even though the two judgments reached opposing conclusions, their reasoning is consistent. Indeed, if in the 1990 case the court enforced a punitive damage award amounting to roughly 40% of the verdict because the punitive aim was "secondary" to the compensatory one, it is not surprising that in the 1982 case the courts said no to a punitive award for 300% of the compensatory damages. If the sum awarded to punish is three times bigger than the sum awarded to compensate, there is no doubt that the primary goal of the verdict is to punish rather than to compensate, and thus the award is in violation of Switzerland's public policy.

IV. Recommendation

Prior to initiating a civil lawsuit against a company or an individual that is either foreign or that has considerable assets outside the United States, a U.S.-based attorney should cautiously and strategically consider the prospective of enforcement. In particular, a U.S.-based attorney should avoid investing significant time and resources to obtain a favorable punitive damages award if such award will not be later enforced by the foreign jurisdiction. Indeed, this consideration should go into the attorney's calculus whether to even seek punitive damages at all.

The initial step to accurately assess the likelihood that a punitive damages award will be enforced by a foreign court is to determine in which country enforcement is going to be sought. After this determination, the U.S.
attorney should study under which general circumstances the foreign country recognizes a foreign judgement. For this purpose, in the absence of an international treaty on the matter between the U.S. and the country of enforcement, one should look at that country's private international laws.\(^{167}\) Next, especially if the foreign country is one of civil-law system, a U.S. practitioner should look into the foreign country's case law,\(^{168}\) specifically concerning punitive damages in light of internal public policy.\(^{169}\) Public policy concerns, in fact, are the ones more likely to block the enforcement of U.S. punitive damages awards in civil-law countries. Lastly, the U.S.-based practitioner should use the information gathered about the foreign country's laws and take all the reasonable steps necessary to maximize the likelihood that an award will be enforced there.

In France, punitive damages are not considered against public policy per se. However, a U.S. judgement containing punitive damages will be enforced only if the ratio between punitive and compensatory damages is "proportionate." The Cour de cassation did not prescribe an exact ratio that satisfies the proportionate requirement, but in Fountain Pajot it found that the relation between $1,391,650 in actual damages and $1,460,000 in punitive damages was disproportionate. To maximize the likelihood of enforcement, a U.S. plaintiff seeking a judgment against a French defendant might consider asking the jury, in the U.S. trial, for an award with less than a 1:1 ratio between punitive and actual damages. The rate of punitive damages will be inversely proportional to the likelihood of its enforcement.

In Switzerland, punitive damages are not contrary to public policy if reasonable in amount. In more detail, while Swiss courts have declined to enforce punitive damages awards when their ratio against compensatory damages was 3:1, they have enforced punitive awards when their amount was roughly 40% of the compensatory damages. To maximize the probability of enforcement in Switzerland, a U.S. plaintiff seeking a judgment against a Swiss defendant might consider asking the jury, in the U.S. trial, for a damage amount less than a 0.5:1 ratio between punitive and actual damages. Similar to France, in Switzerland the rate of punitive damages will be inversely proportional to the likelihood of its enforcement.

In Spain, the U.S. concept of punitive damages is not considered hostile to internal public policy. The Tribunal Supremo has, in fact, generally enforced U.S. judgements that included a punitive award. Nevertheless, it is significant to note that the Miller Import opinion was based on the importance that Spanish law grants to intellectual property rights. As of today, it is not clear whether the Tribunal will grant to all interests the same level of protection as the one accorded to intellectual property rights. Still,

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167. This step is very important, as some countries require, for example, that the judgment is consistent with internal law or that the judgement was not rendered in default.
168. Again, here "case law" is intended to mean "previous decisions," rather than binding cases with precedential value.
169. Consider also contacting local counsel for an in-depth research of the relevant statutes and jurisprudential decisions.
the probability that a U.S. punitive damage award will be enforced by Spanish courts is very high when compared to the other countries examined. To the contrary, Germany and Italy are very unfriendly to U.S. plaintiffs trying to enforce a punitive damages award. The supreme courts of both countries have established that punitive damages violate their country's public policy, without even discussing the proportionality of the sum awarded. There are probably no means by which a U.S. practitioner can "maximize" the chances that punitive damages will be recognized in those two countries. Nevertheless, a U.S.-based attorney should keep in mind that, while in Germany, U.S. judgments that included punitive damages have been enforced only in their compensatory parts, in Italy such judgements have not been enforced at all. As such, the U.S. plaintiff has two options to maximize the probability of enforcement of a U.S. judgement in Italy: (1) asking the U.S. jury to award only compensatory damages; or (2) asking the U.S. jury to award also punitive damages, while requesting the U.S. court to clearly distinguish the two awards in the verdict. A U.S.-practitioner should be particularly cautious with the second option because, as happened in Fimez and Soc. Ruffinatti, the lack of distinction between punitive and compensatory damages in the U.S. judgment will likely result in the non-enforcement of the whole award.

V. Conclusions

A U.S.-based attorney should not underestimate the difficulties that the enforcement of a U.S. punitive damage award in a civil-law country entail. Every country in Europe bears different, although similar, traditions and values. In some of these countries, like France and Spain, private penalties are not entirely absent, and enforcement of U.S. punitive damages awards are, under certain circumstances, not entirely despised. In some others, like Italy and Germany, the idea of punitive damages is so despicable that the non-enforcement of punitive damages is a matter of internal public policy.

In preparing a litigation plan, attorneys must remain mindful of their client's primary interest: not to obtain a favorable judgment, but to secure from that judgment an actual, tangible result that can be obtained only through enforcement mechanisms. For these reasons, it is particularly important that U.S.-based practitioners involved in a transnational litigation conduct their research not only about the jurisdiction in which they are litigating but also about the jurisdiction in which they are planning to enforce the judgement.

170. At least, that is, in its compensatory part.