

Licari & Janke on Punitive Damages

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A new article on punitive damages and the Fontaine Pajot ruling (see related entries following this) has just been published on SRRN, entitled “Enforcing Punitive Damages Awards in France after Fontaine Pajot”; it will also be included in the *American Journal of Comparative Law* in summer. Here is the abstract:

In a landmark ruling, the Cour de cassation held that ‘an award of punitive damages is not, per se, contrary to public policy,’ but that ‘it is otherwise when the amount awarded is disproportionate with regard to the damage sustained and the debtor’s breach of his contractual obligation.’ *Schlenzka & Langhorne v. Fontaine Pajot, S.A.* involved the failed attempt by American judgment creditors to enforce their California judgment against a French defendant in France. At the same time that the judgment creditors were taking their case through the French legal system, the Cour de cassation, in a different line of cases, liberalized the conditions under which a foreign judgment could be enforced in France. But when the Court opened one door for the American plaintiffs, it closed another by refusing to enforce the judgment because it included disproportionate punitive damages. The Court’s reasons were inconsistent with prior interpretations of proportionality and disingenuous to the court’s modern approach to the enforcement of foreign judgments. In just a few words, the Court echoed prevailing French and European sentiments about American punitive damage awards. Unfortunately, the prevailing attitudes are dominated more by prejudice than by fact and reason.

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