(3) really stupid defendants who could have caused a great deal of harm by their action but who actually caused minimal harm."

The court then laid out guidelines and wrote that for really stupid defendants punitive damage awards might be limited to five times compensatory damages, with exceptions. For really mean defendants (those who act intentionally in committing mean-spirited and harmful acts), the courts wrote that punitive damage awards five hundred times compensatory damages are not necessarily unconstitutional. In a dissenting opinion, Chief Justice McHugh wrote, "Unfortunately, by suggesting the use of such subjective and nontechnical terms as really stupid and really mean, the majority has offered no practical guidance to attorneys or judges in analyzing punitive damages cases." It is this lack of allegedly "meaningful safeguards" that the United States Supreme Court is being asked to consider.

Interpretation of Pollution Exclusion in Favor of Insurer

Hybud Equipment v. Sphere Drake Insurance 597N.E.2nd 1096 (Ohio 1992)

Hybud Equipment Corporation collected and transported to a landfill the waste material of various entities. Hybud and others were sued by a property owner, the United States Environmental Protection Agency, and the State of Ohio because pollutants leaked from the landfill. Sphere Drake Insurance was requested to provide a defense and refused to do so. The refusal was bottomed on the contract language contained in the comprehensive general liability policy which was in effect from June 30, 1986, until June 30, 1987.

The standard pollution exclusion provided, "This insurance does not apply ... to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkaloids, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or other water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental." The trial court held that Sphere Drake was required under the language of the policy to provide a defense and indemnify its insureds.

The case was appealed to the ninth appellate district, which affirmed the judgment of the trial court. The case was then appealed to the Ohio Supreme Court. The Ohio Supreme Court wrote, "We conclude that Sphere Drake was not under an obligation to defend the insureds in the three underlying actions because the claims in those actions were excluded from coverage by the pollution exclusion in each of the two policies. Accordingly, the judgments of both the trial and appellate courts are reversed."

The Ohio Supreme Court made some interesting comments. The court wrote that in applying rules to its construction of written contracts, "we have stated that the most critical rule is that which stops this court from re-writing the contract when the intent of the parties is evident, i.e., if the language of the policy's provisions is clear and unambiguous, this court may not resort to construction of that language.... Thus, in reviewing an insurance policy, words and phrases used therein must be given their natural and commonly accepted meaning, where they in fact possess such meaning, to the end a reasonable interpretation of the insurance contract consistent with the apparent object and plain intent of the parties may be determined."

The court wrote, "Specifically, we hold that the word 'sudden' in the exception is not synonymous with the word unexpected in the typical definition of occurrence. Instead, the word also has a temporal aspect. The court went on to write that the term sudden was not ambiguous and means happening quickly, abruptly, or without prior notice. Second, the court wrote that unless the word sudden is interpreted to have a temporal aspect it does not add anything to the phrase sudden and accidental. Third, the court found that, if the term sudden were interpreted to be synonymous with the term unexpected, the entire pollution exclusion would not serve the purpose for which it was clearly included in the policy."

This case is another in the line of state court decisions which have split on the question of whether gradual pollution is excluded under the CGL. Ohio's Supreme Court has aligned itself with those courts that have found the term sudden to mean abruptly or rapidly rather than with those courts that have found the term to be ambiguous because it could also mean unexpectedly or without warning.