

## **Punitive Damages in Insurance Bad-Faith: Cases After State Farm v. Campbell**

**Despite what you may have heard, the United States Supreme Court's recent decision in State Farm Mutual Automobile Insurance Company v. Campbell, \_\_\_ U.S. \_\_\_, 2003 WL 1791206, is not the death knell for punitive damages in California insurance-bad-faith cases. While it is certainly not a pro plaintiff case, the uniqueness of Campbell's facts and the tentativeness and qualifications in the Court's ruling should, in most cases, prevent defendant insurers from making much use out of Campbell in post-trial and appellate arguments for reducing punitive-damages awards.**

### ISSUE BEFORE COURT

The Court framed the issue, first generally, as how much punishment through punitive damages a state may impose on a defendant in a civil case; and then, more specifically, whether, under the facts of that particular case, a \$145 million punitive-damages award was excessive and in violation of the due process clause in the 14th Amendment to the U.S. Constitution.

### FACTS OF CASE

Twenty-two years ago in Utah, Curtis Campbell, while driving with his wife Inez Campbell, negligently caused the death of one driver and the permanent disability of another. After a civil action was filed against them, the Campbells' automobile insurer, State Farm Mutual Automobile Insurance Company ( State Farm ) (1) decided to contest liability; (2) declined offers to settle within the \$50,000 policy limit; (3) altered company records to make Mr. Campbell appear less culpable; (4) disregarded the overwhelming likelihood of Mr. Campbell's liability and the near-certain probability that the court would issue an award in excess of the policy limit; (5) ignored the advice of one of its own investigators; and (6) assured the Campbells that they had no liability, that their assets were safe, that State Farm would represent their interests, and that they did not need separate counsel.

The jury, however, determined that Mr. Campbell was 100% at fault, and a judgment was entered for more than twice what had been offered in settlement and over \$135,000 more than the policy limit.

State Farm responded by first refusing to cover the excess liability, even telling the Campbells to put for-sale signs on their property, and then refusing to post a supersedeas bond to allow them to appeal the judgment. This forced the Campbells to hire their own counsel to appeal the verdict. After the Campbells' appeal was denied, State Farm paid the entire judgment. The Campbells then sued State Farm.

At trial, the court's ultimate \$145 million punitive-damage award was largely based on the Campbells' evidence of State Farm's activities conducted nationwide (not just in Utah) that, according to the majority opinion written by Justice Kennedy, were dissimilar and bore no relation to the Campbells' harm. (Justice Ginsburg in her dissenting opinion strongly disagreed with this finding.)

After the Utah courts' adjustment of the verdict amounts, \$1 million in compensatory damages and \$145 million in punitive damages remained before the case went up to the U.S. Supreme Court.

### MAJORITY OPINION OF COURT

In a 6-3 ruling (with Justices Scalia, Thomas, and Ginsburg dissenting), the Court ruled that the punitive award of \$145 million was neither reasonable nor proportionate to the wrong that State Farm had committed against the Campbells, and that it was an irrational and arbitrary deprivation of State Farm's property. Thus, this amount was found to be excessive and in violation of the due-process clause.

## THE COURT'S REASONING

The Court in *Campbell* relied heavily on its holding seven years earlier in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996), in which it set the three guideposts for reviewing punitive-damages awards:

- (1) Reprehensibility of Conduct (the most important factor);
- (2) Ratio of Punitive Award to Plaintiff's Harm; and
- (3) Difference between Punitive Award and Civil Penalties Authorized in Similar Cases.

The Court then set forth the components of each of these guideposts and their application to the particular facts of this case.

### 1. Reprehensibility of Conduct

The Court set forth the five relevant components within this guidepost that it had determined in *BMW v. Gore*, adding two more factors based on the new facts before it. The Court explained the significance to be accorded to each of these factors as follows: The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect. As shown below, the opinion of the Court actually applied only one of the five *BMW v. Gore* factors to the facts of the case.

A. Physical Harm rather than just Economic. The Campbells suffered no physical injuries and only minor economic harm because State Farm paid the excess verdict against the Campbells before their complaint was filed. Interestingly, the emphasis in *BMW v. Gore*, too, on the simply economic nature of the plaintiff's harm appears to diminish the precedential effect that these two decisions have in cases involving bodily injury.

B. Indifference or Reckless Disregard as to Health/Safety. The Court did not apply this element to the facts before it.

C. Plaintiff's Financial Vulnerability. The Court did not apply this element either to the facts before it. It is curious and perhaps significant that the opinion of the Court disregarded this element. After all, Justice Ginsburg in her dissent characterized the Campbells as fitting in the weakest of the herd category and appearing economically vulnerable and emotionally fragile, noting also that Mr. Campbell had residuary effects from a stroke and Parkinson's disease.

Perhaps the majority opinion of the Court reflected less sympathy for Mr. Campbell because his reckless driving (trying to pass six vans ahead of him on a two-lane highway) caused the death of one motorist and made another permanently disabled; and, ultimately, the entire verdict against him (even over his policy limit) was paid for by his insurer. But whatever the reason, the fact that the opinion of the Court evinced little sympathy for the Campbells makes this case materially distinguishable from many insurance-bad-faith actions that involve more pitifully innocent victims of insurers' tortious conduct.

D. Repeated Conduct rather than Isolated Incident. The Court also did not apply this element to the facts before it.

E. Harm caused by Intentional Malice, Trickery, or Deceit rather than Accident. The Court implicitly found that State Farm's conduct included trickery or deceit, but it did not rely on this as a factor in its decision.

### F. Two Additional Factors

(1) Defendant's only relevant conduct is that committed within the State and of the type that harmed these plaintiffs. The majority opinion found that the Campbells' abundant evidence of State Farm's wrongdoing predominantly occurred outside Utah where it was most often lawful, did not harm the Campbells, and thus was irrelevant to the punitive-damage award -- notwithstanding Justice Ginsburg's dissenting opinion that strongly disputed these findings.

(2) Defendant's wealth cannot justify a punitive damages award that is already unconstitutional. This finding does not mean that a defendant's wealth is irrelevant in determining the amount of punitive-damages properly assessed against a defendant. As the California Supreme Court has held, the absence of evidence of a defendant's financial condition raises doubt as to the constitutionality of a punitive damages award.

(Adams v. Murakami (1991) 54 Cal.3d 105, 118.) The Court in Campbell just held that a defendant's wealth alone will not make constitutional an award that is so excessive as to violate the due-process clause.

Therefore, although the opinion of the Court set forth five factors to be considered in determining the reprehensibility of the defendant's conduct, it actually applied only one of these (economic rather than physical harm). As a result, despite Justice Ginsburg's dissent that found State Farm's conduct to be far more reprehensible, the opinion of the Court leaves open the application of four additional factors when determining the proper amount of punitive damages in a particular case.

Plaintiffs' counsel can therefore distinguish Campbell in part by emphasizing in their cases (1) plaintiff's physical injuries caused by defendant's conduct, (2) defendant's indifference to or reckless disregard for plaintiff's health or safety, (3) plaintiff's financial vulnerability, (4) the repetition of defendant's conduct, and (5) the harm caused by defendant's intentional malice, trickery, or deceit.

As for the two additional factors, the Court's ruling calls for plaintiffs' counsel (1) to limit their attacks on defendants, when in state court, to only the conduct committed within the state and which was similar to the conduct that caused harm to plaintiffs, and (2) not to rely on a defendant's wealth to support a punitive-damages award that is so excessive as to violate the due-process clause, even if it is essential that evidence of its wealth is required to support an otherwise constitutional punitive award.

## 2. Ratio of Punitive Award to Plaintiff's Harm

The Court explicitly and strongly stated that there did not exist, and it was not here setting, any bright-line ratio, rigid benchmarks, or mathematical formula to limit punitive awards. The Court emphasized that the ratio of punitive damages to compensatory damages was ultimately dependent on the facts of each particular case.

The Court did say that in most cases a single-digit ratio (i.e., anywhere from 1-1 to 9-1) cannot, under due process, be exceeded to a significant degree. Those last four words may be critical. Certainly exceeding a 9-1 ratio up to 145-1 is doing so to a significant degree. But is exceeding a 9-1 ratio to 18-1 or 27-1, for example, done to a significant degree -- that is, multiplying the maximum single-digit ratio by just 2 or 3, rather than over 16 (as in Campbell)?

The Court did discuss ratios it had before approved, but only cited those no higher than 4-1. The opinion of the Court thus completely ignored the 526-1 ratio it approved in *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S.Ct. 2711 (1993) [an opinion co-written by Justices Stevens and Rehnquist, and concurred in by Justice Kennedy, all of whom supported the Campbell opinion], and the 100-1 ratio it approved in *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 109 S.Ct. 2909 (1989).

In light of what the Court in Campbell both says about previously approved punitive-compensatory ratios and omits in this same regard, it will be interesting to see how the California courts now interpret what ratios do and do not exceed a single-digit ratio to a significant degree.

Additionally, the Campbell Court noted that higher ratios may be proper where a particularly egregious act has resulted in small compensatory damages. Conversely, a lesser ratio is preferred when the compensatory damages are substantial, perhaps only equal to compensatory damages. (Emphasis added.) The Court's offering up a 1-1 ratio when compensatory damages are substantial is not only tentative (perhaps), but also explained, contrasted, qualified, and minimized by the confident language in the Court's very next sentence: The precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff. (Emphasis added.)

Tellingly, the Court in Campbell sided with the lesser 1-1 ratio because the Campbells had been awarded \$1 million for just a year and a half of emotional distress. The Court held that this award was not only complete and substantial compensation (which, in context, appears to mean more than enough), but also duplicative of punitive damages since based on outrage and humiliation, which are inherent in both emotional distress and punitive damages. As a result, the Court implied that the Campbells' \$1 million recovery for emotional distress was both excessive and redundant.

Ultimately, the Court held that the precise punitive award in a particular case depends on the facts and circumstances of (1) defendant's conduct, and (2) plaintiff's harm. The Court certainly disapproved of State

Farm's conduct by saying that its handling of the Campbells' claim deserved both no praise and a more modest punishment. But the Campbells' harm was, significantly, not at all physical, barely economic, and almost entirely emotional distress suffered over just a year and a half.

In many insurance-bad-faith cases, the conduct of defendant insurers is more reprehensible and the harm to insureds is greater. Every case is therefore not bound by Campbell's ultimate reduction of punitive damages to equal the 1-1 punitive-compensatory ratio. The particular facts control what is the appropriate ratio in each case.

### 3. Difference between Punitive Award and Authorized Civil Penalties in Comparable Cases

The Court spent just one small paragraph on this final factor, even saying, Here, we need not dwell long on this guidepost. But the Court did say that it is useful to look at the applicable state law's civil sanctions for the charged conduct and compare that to the punitive award. In Campbell, Utah's \$10,000 civil fine for fraud was held to be dwarfed by the \$145 million punitive award. In California, the civil fine for fraud is at least five times greater, as Insurance Code § 1871.4 sets the penalty for insurance-related fraud at fifty thousand dollars (\$50,000) or double the value of the fraud, whichever is greater. But the Court made clear that this was easily the least significant of the three guideposts used when reviewing punitive-damages awards.

## INFLUENCE ON CALIFORNIA INSURANCE-BAD-FAITH CASES

In California bad-faith cases, defense counsel seeking to reduce punitive damages awards will undoubtedly now cite to Campbell in their post trial motions and appellate briefs. When that happens, plaintiffs' counsel can distinguish the unique facts of Campbell and cite especially to its holdings that (1) the Campbells lacked physical or significant economic harm, (2) there is no bright-line ratio between punitive and compensatory damages, and (3) the particular facts of each case determine the appropriate size of punitive awards.

Defense counsel may now cite to Campbell even when drafting motions for summary adjudication of punitive-damages claims, or, worse yet, motions to strike punitive damages claims. Both these venues for the Campbell citation would be improper, since, after all, the Court in Campbell did find that State Farm's bad-faith conduct merited an award of punitive damages against it. Furthermore, the issue before the Court was not whether punitive damages could be pleaded or proven, but rather how much in punitive damages should be awarded. In this way, Campbell may actually help plaintiffs' counsel from the inception of a bad-faith case to the time of a trial-court award of punitive damages.

As a final note, since the three dissenting justices in Campbell are three of the six youngest on the Court, including the very youngest, Thomas (whose dissent stated, I continue to believe that the Constitution does not constrain the size of punitive damages award), and the influential Scalia (whose dissent stated, [T]he Due Process Clause provides no substantive protections against excessive' or unreasonable' awards of punitive damages), there is some hope that, in the future, the High Court may issue a ruling contrary to BMW v. Gore and Campbell, both of which invalidated state-court punitive-damages assessments as unreasonably large.

Until then, though, the job of plaintiffs' counsel will be to demonstrate how their particular cases are factually distinguishable from Campbell, to ensure that their requests for and recoveries of punitive damages are not limited by this Supreme Court opinion.