

APPELLATE PRACTICE POINTER

In State Farm Mut. Automobile Ins. Co. v. Campbell, 2003 WL 1791206 (U.S. April 7, 2003), the United States Supreme Court further defined the Due Process limitations on excessive punitive damages awards in civil cases, striking down a \$145 million punitive damages award against State Farm for its bad faith refusal to settle a suit against its insured, when only \$1 million had been awarded as compensatory damages. A key and improper element in determining the amount of punitive damages had been State Farm's nationwide activities to meet its fiscal goals, including dissimilar conduct in other states.

The Court applied the three-part test developed in BMW of N. America, Inc. v. Gore, 517 U.S. 559 (1996): (1) degree of reprehensibility of the conduct; (2) disparity between amount of actual and punitive damages; and (3) difference between punitive damages awarded by the jury and other civil or criminal penalties in comparable cases. The second element was the most critical, with a ratio of 145:1 clearly exceeding the "single-digit multiplier" that was more likely to comport with Due Process, at least when the amount of compensatory damages was substantial. Id. at 10. The Court also suggested that a 4:1 ratio may approach constitutional limits if the compensatories are significant. Id. While financial worth remains a factor for consideration, wealth alone cannot justify a large punitive damages award.

Critical to the decision was the improper use of out-of-state conduct that was legal where committed, as well as the dissimilar nature of this out-of-state conduct. Because the out-of-state conduct (such as employees policies or market competitive advantages) bore no relationship to State Farm's actions in refusing to settle this particular insurance claim, consideration of this other conduct was improper. Id. at 9.

Based on this decision, trial counsel should object to all punitive damages evidence based either on conduct in other states (especially conduct legal in other states) and any evidence of misconduct that is dissimilar to the case being tried, whether in-state or out-of-state. Because the Court also considered as one of the Gore factors other comparable civil or criminal penalties, trial counsel should also consider offering evidence on this issue.

In addition, because the type of compensatory damages awarded against State Farm consisted of emotional distress, which overlapped punitive damages by containing elements of retribution, the Court opined that punitive damages at or near the \$1 million compensatory damages would be appropriate. Thus, if compensatory damages awarded in a given case already contain an element of punishment for misconduct, objection to punitive damages for an amount substantially in excess of compensatory damages should likewise be made.

Jury instructions will need to be tailored to this decision.

This publication is not intended as, and does not represent, legal advice and should not be relied upon to take the place of such advice. Since factual situations will vary, please feel free to contact a member of the firm for specific interpretation and advice, if you have a question regarding the impact of the information contained herein. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.