

CARLTON FIELDS

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CARLTON FIELDS PRODUCTS LIABILITY PRACTICE GROUP'S FLORIDA PUNITIVE DAMAGES ADVISORY (June 2003)

I. Supreme Court Limits Punitive Damages Awards

The U.S. Supreme Court decided on April 7, 2003 that a punitive damage award of \$145 million is excessive and violates the Due Process Clause of the Fourteenth Amendment where full compensatory damages are \$1 million. See *State Farm Mutual Automobile Insurance Co. v. Campbell*. This decision represents the high court's most aggressive and detailed effort yet to rein in the astronomical punitive damages awards that have driven civil litigation in Florida and the other states. The opinion is significant not only because it overturned a large punitive damages award, but also because the Court was explicit in setting new constitutional limits on punitive damages.

In 1981, Curtis Campbell was driving with his wife, Inez, in Cache County, Utah. As he attempted to pass six vans traveling ahead of him on a two-lane highway, Campbell caused the vehicle coming in the opposite direction to swerve onto the shoulder and eventually collide with another vehicle. One person died and another was left permanently disabled as a result of Campbell's actions. In the ensuing wrongful death and tort action, Campbell insisted he was without fault. The initial investigation clearly indicated otherwise.

Despite Campbell's obvious fault, the Campbells' insurer, State Farm, assured them that they had no liability for the accident, insisted that they did not need separate counsel, and refused to settle the claims for the \$50,000 policy limits. A Utah jury returned a judgment against the Campbells for more than three times the policy limits. State Farm refused to appeal, offered to pay only \$50,000 of the judgment, and suggested that the Campbells put a "for sale" sign outside their house to help pay for the rest. It took more than a year and a half before State Farm agreed to pay the entire judgment.

The Campbells sued State Farm for bad faith in refusing to settle the claims, exposing them to damages in excess of their policy limits, and in the process subjecting them to emotional distress. At trial, the Campbells introduced evidence establishing that

State Farm's actions were part of a nationwide scheme to reduce claims payments by refusing to settle. Also introduced was testimony from former State Farm employees who cited several methods employed by the company, including falsifying documents, to deny claimants fair benefits. With regard to the Campbells' claim, it was discovered that a State Farm manager had instructed an adjuster to write in the claim file that the individual killed in the accident was "speeding because he was on his way to see a pregnant girlfriend." In truth, there was no pregnant girlfriend. The jury returned a verdict, which the Utah Supreme Court ultimately upheld, in favor of the Campbells awarding them \$1 million in compensatory damages and \$145 million in punitive damages.

In overturning the Utah high court's decision, the Supreme Court relied heavily on its prior decision in *BMW of North America, Inc. v. Gore*, which set forth three guideposts for assessing the constitutionality of a punitive damages award. Though reluctant to declare a bright-line rule for punitive damages, the Court reiterated and explained the following guideposts from *Gore*: 1) The degree of reprehensibility of the defendant's misconduct; 2) The disparity between the actual or potential harm suffered by the plaintiff and the punitive damages; and 3) The difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

(a) Reprehensibility Considerations

With respect to the first guidepost, the Court held that in determining the reprehensibility of a defendant's conduct, courts should consider whether: the harm was physical rather than economic; the alleged wrong displayed an indifference to or a reckless disregard of the health or safety of others; the conduct involved repeated actions or was an isolated incident; and whether the harm resulted from intentional malice, trickery, or deceit, or mere accident.

Here, the Supreme Court acknowledged State Farm's handling of the Campbell claim in Utah "merit[ed] no praise." The Court also noted, however, the case — improperly— was used as platform to expose and punish the perceived deficiencies of State Farm's operations throughout the country. It was clear to the Court that the Campbells' theme at trial was to punish State Farm for the harm not only done to them but also insureds nationwide. The Utah courts improperly allowed the jury to consider a broad range of out of state conduct, even though it had nothing to do with the Campbells' claim. Some of this conduct, the Court pointed out, may in fact have been legal in the states where it took place. The Court concluded that "[a] State cannot punish a defendant for conduct that may have been lawful where it occurred."

The Court also cited a “more fundamental reason” for its ruling: The Utah courts awarded punitive damages to punish and deter conduct that had nothing to do with the Campbells’ actual harm. A defendant should be punished for the conduct that harmed the plaintiff, and “not for being an unsavory individual or business.” Otherwise, punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct. That is, because individuals who are not parties to a suit are not bound by the judgment some other plaintiff obtains, they are free to pursue a punitive damage award against the same defendant for the same conduct. Ultimately, a defendant should be punished for being bad to the plaintiff rather than just being plain bad.

(b) Ratio between actual harm and the amount of punitive damages

As to the second guidepost, the Court, though reluctant to establish a “bright line rule,” ruled that “few awards exceeding a single-digit ratio” (i.e. up to a factor of nine) between punitive and compensatory damages will satisfy due process. Not surprisingly, the Court found that the 145 to 1 ratio in *Campbell* was too great. The Court did caution that in cases where the wrong is egregious but the economic damages are small a punitive damages award could exceed the single-digit ratio. Alternatively, in situations where compensatory damages are substantial, a lesser ratio, “perhaps only equal to compensatory damages,” would be permissible. This latter comment suggests that in large volume cases (i.e. where compensatory damages are high) a one to one ratio between compensatory damages and punitive damages would be permissible.

More important, the Court curtailed the use of a defendant’s wealth as a factor justifying a punitive damages amount. Particularly, the Court stressed the “wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.” In the process, the Court seems to be rejecting the “send a message” punitive damages theory often advanced by plaintiffs. That is, the theory that punitive damages have to be very high to deter corporate wrongdoing. The Court instead posited that the “precise award” ultimately “must be based upon the facts and circumstances of the defendant’s conduct and the harm to the plaintiff.”

(c) Relationship between punitive damages and available civil penalties

For the third factor, the Court briefly analyzed the disparity between the punitive damages award and the “civil penalties authorized or imposed in comparable cases.” The Court specifically focused on the most relevant sanction under Utah state law for the alleged wrong done to the Campbells, which was \$10,000 for an act of fraud. The

Court concluded that the \$145 million punitive damages award “dwarfed” the \$10,000 civil penalty for fraud in Utah.

II. Supreme Court Continues Trend in Post-*Campbell* Rulings

On May 19, 2003, the Court overturned a \$290 million punitive damages award against Ford Motor Company, where \$4.6 million had been awarded as compensatory damages. The award stemmed from a 1993 California rollover accident that killed three passengers and injured three others, all members of the same family, traveling in a 1978 Ford Bronco. The surviving passengers sued Ford, claiming the roof had been improperly designed due to a lack of steel reinforcement. The California Supreme Court upheld the \$290 million punitive damages award, which many claimed was the largest personal injury award upheld on appeal in U.S. history. Relying on their opinion in *Campbell* that punitive damages must be reasonable and proportionate to the harm suffered by the plaintiffs, the Court sent the case back to the California state court for further consideration.

In another Ford case, the Supreme Court granted Ford’s appeal over a \$15 million punitive damages award. The case, which originated in Kentucky, was brought on behalf of the owner of a Ford pickup truck crushed and killed when his vehicle slipped into reverse from park. Similar to the California case, the Court overturned the punitive damages award and remanded the case to the Kentucky high court for further consideration in light of *Campbell*.

These decisions represent the first of what figure to be numerous applications of *Campbell* and the new constitutional limits to punitive damages.

III. Impact of *Campbell* on Punitive Damages in Florida

In Florida, Section 768.73, Fla. Stat., creates a statutory cap on punitive damages awarded in tort cases. Based on this statute, a punitive damages award generally may not exceed three times the compensatory damages amount or \$500,000, whichever is greater. If, however, a defendant is motivated by unreasonable financial gain, then an award may not exceed four times the compensatory damages amount or \$2 million, whichever is greater. An exception to this statutory cap arises if a defendant had a specific intent to harm the claimant and does in fact harm the claimant. Under such a scenario, there is no cap on the punitive damages that may be awarded.

While a statutory cap that limits most punitive damages awards to three or four times the compensatory damages amount seems to comport with *Campbell*, the same may not necessarily be true for the analysis employed by Florida courts addressing the

exception to this cap. A survey of recent Florida case law reveals that courts generally find a punitive damages award is excessive, that is, cannot overcome the statutory presumption of excessiveness imposed by Section 768.73, where the award bears no relation to the amount a defendant is able to pay and where the tort committed is lacking the degree of maliciousness to sustain the award amount. The Florida Supreme Court, for example, upheld a punitive damages award of \$31 million (18 times the compensatory amount), in part, because the award constituted less than 2% of the defendant's net worth. Conversely, the Fourth District Court of Appeal (West Palm Beach) reduced a punitive damages award of \$7.5 million (also 18 times the compensatory amount) where the defendant had a salary of \$9 per hour and \$1,000 in total assets. In yet another example of a defendant's wealth playing a factor, the same Fourth DCA upheld a \$19 million punitive damages award, in part, because plaintiff "established that based on market value [defendants] had a combined net worth of over one billion dollars."

Though examining the maliciousness or willfulness of a defendant's conduct is consistent with *Campbell*, the Florida practice of focusing on a defendant's net worth clearly is in conflict. As previously noted, the Supreme Court in *Campbell* underscored that a defendant's wealth cannot justify an otherwise unconstitutional punitive damages award. Florida courts deciding whether a punitive damages award comports with the Due Process Clause of the Fourteenth Amendment will have to shift their focus away from a defendant's wealth and, instead, place a greater emphasis on the relationship between defendant's misconduct and plaintiff's actual harm. This, in all likelihood, will level the playing field for defendants by limiting the use of a defendant's wealth as a tool to justify punishment. Discovery into a defendant's net worth likewise may be limited, since net worth, except in rare instances, no longer should be an allowable consideration in Florida.

This area of the law, both in Florida and nationwide, will continue to evolve, and we will endeavor to keep you abreast of significant changes. If you should have any specific questions about punitive damages, we would welcome a telephone call, letter or e-mail inquiry.

For more information, call Carlton Fields' Products Liability Practice Group at (800) 486-0140 (ext. 7417) or visit our web site at www.carltonfields.com.

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