# Punitive Damages: How Much Is Too Much?

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The imposition of punitive damages is one of the hottest topics in law today. In the theoretical realm, the debate by scholars, jurists and attorneys over the constitutional and jurisprudential aspects of punitive damages has never been more vibrant. Paradigm examples are the recent cases interpreting the landmark United States Supreme Court decision on the constitutionality of punitive damages in State Farm Mut. Auto Ins. Co. v. Campbell (2003) 538 U.S. ___, 123 S. Ct. 1513, 1555 L. Ed. 2d 585.

In the practical realm, many politicians and tort reform advocates constantly press for caps and limitations on punitive damage awards even as juries nationwide impose millions of dollars of punitive damages upon defendants. Previously the controversy and contention surrounding punitive damages produced more heat than light. Recently, however, the Courts have gutted the possibility of high punitive damage awards more than any tort reform initiative ever envisioned. This article sets forth the fundamental principals and legal standards for the calculation of punitive damages as they exist today.

The United States Supreme Court established three "guideposts" to consider in reviewing punitive damage awards for excessiveness. Initially announced in BMW of North America, Inc. v. Gore (1996) 517 U.S. 559 [116 S. Ct. 1589, 134 L. Ed. 2d 809] and reaffirmed in State Farm Mut. Auto Ins. Co. v. Campbell (2003) 538 U.S. ___, 123 S. Ct. 1513, 1555 L. Ed. 2d 585, the three "guideposts" are "(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 award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." (State Farm Auto Ins. Co. v. Campbell, supra.)

The California Supreme Court has articulated three similar factors: (1) "the particular nature of the defendant's acts in light of the whole record," (2) "the amount of compensatory damages awarded," and (3) "the wealth of the particular defendant." Neal v. Farmers Ins. Exchange (1978) 21 Cal.3d 910, 928. Both formulations require the reviewing court to consider all guideposts together, not in isolation. Campbell, supra, 123 S. Ct. at p. 1520; Neal, supra, 21 Cal.3d at p. 928. All guideposts must be considered to see if the award furthers the "legitimate interest in punishing unlawful conduct and deterring its repetition." BMW of North America, Inc. v. Gore, supra, 517 U.S. at p. 568.

In considering whether the defendant's conduct was reprehensible, the U.S. Supreme Court has instructed reviewing courts to evaluate reprehensibility and to consider whether "the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery or deceit, or mere accident." Campbell, supra, 123 S. Ct. at p. 1521.

Even where cases are only economic in nature and do not have the potential for physical harm or harm to the public's health and safety, substantial punitive damages are allowed if the defendant's scheme if successful could have caused greater damages than actually inflicted. By example, in TXO Production Corp. v. Alliance Resources Corp. (1993) 509 U.S. 443, 462 [113 S. Ct. 2711, 125 L. Ed. 2d 366] a defendant schemed to reduce its multi-million dollar royalty obligation and the court found that punitive damages were not excessive "in light of the amount of money potentially at stake.

The U.S. Supreme Court in Campbell dealt with the issue of whether under the facts of that case a $145 million punitive damage award was excessive and in violation of the due process clause in the Fourteenth Amendment to the United States Constitution. In its reasoning, the Campbell court relied heavily on its holding seven years earlier in BMW. In Campbell the court explicitly and strongly stated that there was no bright line ratio or rigid benchmark or mathematical formula to limit punitive damage awards. The court stated that the governing factor would be the reprehensibility of the conduct thus dependent on the facts of each case.

Although the court did hold that "single digit multipliers are more likely to comport with due process." Campbell, supra, 123 S. Ct. at p. 1524.

Although the Campbell court has stated that it was not imposing any bright line ratio or mathematical formula, it is cited for the proposition that in most instances anything over a 9:1 ratio is constitutionally suspect. The more recent decisions by the California Fourth and First Appellate Districts in Diamond Woodworks, Inc. v. Argonaut Insurance Co. (2003) 109 Cal.App.4th 1020, (4:1 ratio) and the January 20, 2004 opinion in Henley v. Phillips Morris, (2004) WL 79075 (Cal.App. 1 Dist.) Bring the ratio down to 4 to 1 and in some instances where the compensatory damages are substantial, down to a constitutional limit of 1 to 1. The Court in Henley held that a 4 to 1 ratio may typically be "close to the line of constitutional impropriety." It allowed a 6 to 1 ratio because of what it found to be "extraordinarily reprehensible conduct by Phillip Morris in directly targeting its marketing to teens and preteens" eventually leading to disease and often death. Even with that finding it reversed the trial court and reduced a $25 Million punitive damage award to $9 Million.

In conclusion, the law on punitive damages continues to evolve and all that can be said with any certainty is that the pendulum has swung away from large punitive damage awards aimed at punishing and deterring reprehensible conduct to protecting defendants from arbitrary or excessive punishment.

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