

Campbell v. State Farm: Utah Adopts Punitive Damage Ratio of 9-to-1

By Daniel U. Smith

In the punitive damages debate started by *State Farm v. Campbell* (2003) 123 S.Ct. 1513, the Utah Supreme Court has responded, awarding \$9 million in punitive damages, *nine times* the compensatory award of \$1 million. (*Campbell v. State Farm Mut. Auto. Ins. Co.* (2004) __ P.2d __ (2004 WL 869188).)

The Utah decision represents a vigorous assertion of state rights, setting an example for California courts seeking to apply the Supreme Court's ruling in *Campbell*. Two aspects of the Utah decision are noteworthy. First, the Utah court exercised its discretion to determine for Utah the reprehensibility of State Farm's misconduct, imposing a punitive award nine times the compensatory award. Second, the Utah court regarded State Farm as needing deterrence from future misconduct, *not* because of prior similar bad acts, but because during the litigation State Farm made no apology and showed no remorse, instead, with "obdurate insistence," claiming to be "proud" of its treatment of the Campbells.

The saga began when Curtis Campbell killed an oncoming driver and was sued for wrongful death. State Farm, his auto insurer, refused to settle for the \$25,000 policy limits, falsely assuring him that his "assets were safe" and he need not hire independent counsel. Campbell then suffered an excess judgment of \$135,000. After judgment State Farm initially refused to post an appeal bond above \$25,000 and told Campbell to put his house up for sale "to get things moving." Eventually, State Farm paid the judgment.

In the Campbells' bad faith suit, it was discovered that State Farm had destroyed documents to conceal its wrongdoing. The jury awarded the Campbells over \$2,000

in special damages, \$2.6 million in compensatory damages, and \$145 million in punitive damages. The trial judge reduced the compensatory award to \$1 million and the punitive award to \$25 million. But the Utah Supreme Court reinstated the punitive award of \$145 million. (*Campbell v. State Farm Mut. Auto. Ins. Co.* (2001) 65 P.3d 1134.)

The U.S. Supreme Court struck the punitive damages award as excessive. Adopting the test offered in an amicus brief by the United States Chamber of Commerce, the Supreme Court ruled that Due Process generally bars punitive damages exceeding compensatory damages by more than a single-digit ratio. (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 __ 408.) Moreover, the Supreme Court recommended "a punitive damages award at or near the amount of compensatory damages" of \$1 million. (*Id.* at 429.)

In recommending a single-digit ratio as the ceiling for punitive damages in certain cases, the Supreme Court confirmed its prior decisions that there is no bright-line test that applies in every case. The Court had previously said that "States necessarily have considerable flexibility" on punitive damages, and no "simple mathematical formula" exists for a "grossly excessive" award because a "particularly egregious act" will support a higher award. (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 582.) And Justice Kennedy (author of *State Farm*) wrote in 1991 that for limits on punitive damages, "the laws of the particular State must suffice." (*Pacific Mut. Life Ins. Co. v. Haslip* (1991) 499 U.S. 1, 42, concurring opinion.)

In *Campbell*, the Utah Supreme Court on remand established two vital principles



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First, the Utah court noted that the Supreme Court did not remove "discretion" from state courts to resolve "questions of state law." (§ 7, 10.) Indeed, the Supreme Court has said that, within the limits of Due Process, states possess "broad discretion ... with respect to the imposition of criminal penalties and punitive damages" (*Cooper Indus., Inc. v. Leatherman Tool Group, Inc.* (2001) 532 __ 424, 433.) Regarding the Supreme Court's recommendation of punitive damages "at or near the amount of compensatory damages," the Utah court found in this observation "words of prediction, not direction," "ced[ing] to us the responsibility to assess the reprehensibility of State Farm's conduct, to identify Utah's legitimate interests, and to exercise reasoned judgment in fixing punitive damages." [¶ 12]

Second, the Utah court exercised a state's right to make its own assessment of a defendant's blameworthiness. The Utah court said the Supreme Court had not "announced a federal standard measuring reprehensibility," so that "the degree of blameworthiness assigned to conduct may ... differ among the states." [¶ 16, 17]. Hence, the Utah court was able to conclude that "we find the blameworthiness of State Farm's behavior toward the Campbells to be several degrees more

offensive than the Supreme Court's less than condemnatory view that State Farm's behavior "merits no praise." [¶18] (Citation omitted.)

Reprehensibility

To determine State Farm's blameworthiness, the Utah court applied the Supreme Court's five factors for reprehensibility. (538 U.S. at 419.)

1. Physical or economic harm

The Utah court did not regard the Campbells' injuries as limited to economic loss. The Utah court recognized that the loss of peace of mind (a primary reason for buying insurance) can risk loss of "emotional and physical health." [¶ 27] (Citation omitted.) "[M]isconduct which occurs in the insurance sector of the economic realm is likely to cause injury more closely akin to physical assault or trauma than to mere economic loss." [¶28]

2. Reckless disregard of health or safety of others

The Utah court found State Farm "indifferent" to the foreseeable "stress and trauma" to the Campbells, thus "evinced a reckless disregard for the Campbells' peace of mind." [¶31]

3. Plaintiff's financial vulnerability

The Utah court found the Campbells' financial vulnerability "obvious." Moreover, State Farm may have been "motivated" by their financial vulnerability when it advised them to put a "for sale" sign on their house. [¶ 32]

4. Repeated misconduct

The Utah court noted that "[r]epeated misconduct justifies a more severe sanction." [¶33] On the issue of State Farm's recidivism, the Supreme Court had rejected evidence of State Farm's dissimilar out-of-state conduct. Hence, the Utah court focused on State Farm's conduct during the litigation. State Farm had "refuse[d] in its brief on appeal to concede any error or impropriety in the handling of the Campbell case." [¶ 34] The Utah court noted State Farm's "obdurate insistence" "that its treatment of the Campbells was proper clearly calls out for vigorous deterrence." [¶33] State Farm claimed it was "proud" of its treatment of the Campbells,

and that it was a "victim" of a "conspiracy" by the Campbells and others to sue and share in the recovery. [¶34] The Utah court concluded that State Farm's "defiance" "strongly suggests that it will not hesitate to treat its Utah insureds with the callousness that marked its treatment of the Campbells." [¶35]

5. Malice, trickery or deceit

The Supreme Court said that misconduct was more worthy of punishment if it flowed, not from "mere accident," but from malice, trickery or deceit. State Farm had sought to reduce its economic exposure by discrediting the wrongful death victim with a false story that he had been speeding to visit his pregnant girlfriend. "This deceitful conduct" is explainable only as "part of a scheme to reduce State Farm's economic exposure." [¶ 36]

Ratio of Compensatory to Punitive Damages

In determining the proper ratio of punitive damages to compensatory damages, the Utah court rejected the Supreme Court's suggestion that the compensatory award for emotional distress already included an element of punishment. [¶37] This suggestion, "though plausible as an abstract proposition," did not apply here because the trial judge had reduced the compensatory award from \$2.6 million to \$1 million and the judge's "extensive and detailed findings" showed the award "was purged of" any elements of punitive damages." [¶38]

On the proper ratio between punitive and compensatory damages, the Utah court rejected the Supreme Court's suggestion of a one-to-one ratio because this was not a case of "a sizeable compensatory damages award for economic injury ... coupled with conduct of unremarkable reprehensibility." [¶ 39] Instead, the Utah court had "no difficulty concluding that conduct which causes \$1 million of emotional distress and humiliation is markedly more egregious than conduct which result in \$1 million of economic harm." [¶ 40]

Hence, the Utah court, after considering "all" reprehensibility factors, "conclude[d] that a 9-to-1 ratio between compensatory and punitive damages" (\$9,018,780.75) "serves Utah's legitimate goals of deterrence and retribution within

the limits of due process." [¶ 41]

Comparable Penalties

In assessing comparable penalties and fines, the Utah court ruled that Utah's \$10,000 fine supported the \$9 million punitive award. [¶ 45] California Insurance Code Section 790.035 provides for a \$5,000 penalty, increased to \$10,000 if the violation is "willful," for an insurer who engages in "any unfair method of competition or any unfair or deceptive act or practice." This provides another basis for application of the Utah Court's decision to cases brought here in California.

Finally, the Utah court declined to include costs and attorney fees as part of the denominator in calculating the ratio of punitive to compensatory damages. [¶47-50].

Conclusion

The Utah Supreme Court has now given courts in every state guidance on the meaning of the U.S. Supreme Court's *Campbell* decision. Most significantly, the Utah court has emphasized that states have the right to determine the reprehensibility of a defendant's misconduct according to each state's own standards, and that even conduct which inflicts no direct physical injury can merit the maximum punishment allowed by due process. ■