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SUPREME COURT REVERSES \$145 MILLION PUNITIVE DAMAGES AWARD *(State Farm Mutual Automobile Ins. Co. v. Campbell)*

The Washington Legal Foundation (WLF) scored a major victory when the U.S. Supreme Court reversed a \$145 million punitive damages award against State Farm Mutual Automobile Insurance Company. In a 6-3 decision written by Justice Anthony Kennedy, the High Court ruled that the large punitive damages award was grossly excessive under the Due Process Clause in light of the Court's earlier opinion in *BMW v. Gore* regarding the proper level of punitive damages awards.

The decision is viewed as a major setback to trial attorneys who have persuaded juries to impose huge multimillion dollar punitive damages awards in addition to large compensatory damages. The trial attorneys' tactics include directing the jury's attention to the size and wealth of the corporation, and urging it "to send a message" by awarding large punitive damages. But in the *State Farm* opinion, the Court made clear that "the wealth of the defendant cannot justify an otherwise unconstitutional punitive damages award." Instead, the amount of punitive damages should be governed by the three factors in the *BMW* case: (1) the reprehensibility of the conduct; (2) the ratio or proportion between the amount of compensatory damages awarded and punitive damages; and (3) the amount of comparable civil or criminal fines that could have been imposed for the wrongful conduct.

In this case, State Farm's insured, Mr. Campbell, was involved in a car accident. The injured party filed a claim against Mr. Campbell, but State Farm, after investigating the accident, concluded that Mr. Campbell was not at fault, and thus, would not settle the case. The injured party eventually filed suit against Mr. Campbell, and recovered more than the coverage limits of his policy. Although the award was affirmed on appeal, State Farm eventually paid the full award, even though it exceeded the policy's coverage.

In the meantime, Mr. Campbell, at the urging of the plaintiff's attorney for the injured party, sued State Farm for bad faith failure to settle the case for the policy limit. Because Mr. Campbell did not suffer any monetary loss, he sued instead for damages for emotional distress allegedly suffered during the brief period between the time the initial judgment which exceeded his policy coverage was awarded, to the time when State Farm actually paid it. Mr. Campbell and his wife were awarded approximately \$1 million in damages, and a staggering \$145 million in punitive damages against State Farm.

WLF's brief, filed on behalf of itself and the Allied Educational Foundation, argued that State Farm's due process rights were violated when Campbell's attorneys were allowed to bring into evidence State Farm's claims practices nationwide, which not only had nothing to do with the third-party claim in Utah, but were perfectly legitimate business practices designed to keep costs down. WLF further argued in its brief, that unless the punitive damages award was overturned, all policy holders would suffer by facing increased premiums.

In applying the three factors in *BMW v. Gore*, the Court agreed with WLF that the large award could not be justified on the "reprehensibility" factor since the jury and the reviewing court considered out-of-state conduct by State Farm that was unrelated to the conduct in question in Utah, and that it did not involve physical injury. As for the second *BMW* factor, the ratio of 145 to 1 of punitive damages to compensatory damages was too great. The Court noted that rarely would a punitive damage award survive constitutional scrutiny if the ratio was more than 10 to 1. Finally, the Court noted that the third *BMW* factor, comparable civil fines or penalties, would also not justify a large punitive damages award. In fact, the Court noted that in this and similar cases, the compensatory damages award itself may include a punitive damages component, and thus, the proper ratio of punitive to compensatory damages could be 1 to 1.

WLF's brief was drafted with the *pro bono* assistance of Arvin Maskin, Konrad Cailteux, and Joanne McLaren, of Weil, Gotshal & Manges in New York. WLF has filed briefs in all the major punitive damages cases before the Supreme Court over the last 10 years. On the very day that the *State Farm* decision was released, WLF filed a brief supporting a petition for review in the Supreme Court in *Ford v. Romo*, where a California jury awarded punitive damages of \$290 million, double that in the *State Farm* case, for injuries suffered due to an alleged design defect in the roof of a 1978 Ford Bronco.

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