

PUNITIVE DAMAGES UNDER ATTACK IN CALIFORNIA

RECENT COURT OF APPEALS RULING SPELLS END FOR THE MASSIVE PUNITIVE DAMAGES?

INTRODUCTION

Punitive damages are an aspect of United States law famous throughout the world and one of the most powerful tools used by the Courts to convince wrong doers that there is no economic benefit in acting intentionally or recklessly in their business dealings.

They are precisely what they sound like...punitive. An effort to “punish” the defendant for conduct that outrages the judge or jury and to act as a deterrent to others tempted to engage in the same activity. They have been remarkably effective in stopping certain types of conduct, such as the automobile companies failing to correct dangerous conditions or failing to recall defects which could harm people.



The essence of the damages is to punish...thus the actual harm to the victim is less important than the wealth of the defendant. The punitive damages must be severe enough to counteract the economic benefit to the defendant even if the particular plaintiff's damages are small. To hurt a multi million dollar company by an award of fifty thousand dollars when the profit they make from the intentional wrong doing is in the hundreds of thousands accomplishes nothing. Thus, a plaintiff damaged only by a small amount may still receive punitive damages far in excess of the harm caused...to punish the defendant. Our firm has received punitive damages against wrong doers ten times the extent of the actual contractual damages caused our client.

The key is to hurt the defendant enough to stop the defendant or others from making the decision to do it again...but the result is the plaintiff receiving far more in damages than the plaintiff suffered. The reasoning of the Courts was that since the plaintiff went to the trouble to try and win the case, this was not unjust.

But that might be changing...

[GRIMSHAW VERSUS FORD MOTOR CO.](#) 119 CAL. APP. 3D 757 is the case causing deep concern to those in favor of punitive damages. In that ruling, the Fifth District Court of Appeals (Fresno) considered an earlier United States Supreme Court ruling in [State Farm Mutual Automobile Insurance Co. v Campbell](#) which held that punitive damages must “bear some reasonable relationship to the individual injury at issue and the compensatory damages awarded.” The Fresno Court stated that punitive damages can only be awarded in relation to the harm to the plaintiffs in a particular case-not as a bludgeon to deter similar acts in the future. The Court also ruled that a defendant's general wealth can be taken into account only to determine the appropriate punishment for PARTICULARLY MALICIOUS CONDUCT not for across the board problems.

“As we read State Farm...the legitimate state goal that punitive damages may seek to achieve is the “condemnation of such conduct” as has resulted in “outrage and

humiliation” to the plaintiffs before the Court. It is not a permissible goal to punish a defendant for everything it may have done wrong.”

This is a significant change from the previous California law as set out in the famous 1981 case, Grimshaw v Ford Motor Company.



The end result? The \$290 million dollar award was reduced to \$23.7 million!

The outraged plaintiff’s lawyer was bitter: “What this decision does is make the legal system of the United States of America irrelevant to the large corporations of America....They can do anything they want and we won’t have the resolve to punish them.”

CONSTITUTIONAL UNDERPININGS:

Much of this stems from the US Supreme Court earlier dislike of the California system of punitive damages. In the State Farm case cited above, the US Supreme Court concluded that the Constitution does not condone the method of punitive damages as previously awarded. The Fresno Court concluded, “The permissible punishment is restricted to the harm inflicted on the present plaintiffs” and that the Supreme Court has “impliedly disapproved” of the broad view of the goal and measure of punitive damages as accepted in California. The Appellate Court concluded that the Supreme Court’s view was that most punitive awards should be limited to single digit multipliers of compensatory damages, making an exception only for the wrongful death causes of action in which the decedent cannot be awarded damages for pain and suffering. In this case, the multiplier used by the Fresno court was five times the actual damages.

THOUGHTS...

Suppose Company X makes an extra profit of fifty dollars by removing a safety feature that is vital for your well being and results in a broken leg for you and anyone else unlucky enough to buy their product but they sell a million of their product a year thus make an extra profit of one hundred million dollars by that decision. Your broken leg costs twenty five thousand dollars to fix thus your punitive damages are...if we use five times multiplier, an extra one hundred and twenty five thousand dollars.

Their decision, unless “malicious,” will not result in more damages than that. To prove they were malicious one must spend a fortune in the case since they will undoubtedly have a dozen engineers testify that your accident was very unusual and they did not expect it.

Do you think they will hesitate to not install that safety feature given the numbers above?

Yet punitive damages have been the bane of American companies and all of us have heard of remarkable verdicts that seem to have no relation to the real dangers involved and seem to result in massive wealth being awarded to the plaintiffs and their lawyers.



It’s a balancing act...which is clearly what the Court is trying to do by leaving punitive damages in situations which are truly outrageous. What the Court fails to see is that proof of such conduct will be remarkably difficult and most plaintiffs’ lawyers will not take on a case unless such

proof is easily achieved. This is a tremendous victory for Corporate America...and whether that is good or bad depends ultimately on your trust in their good faith efforts to sell products that are safe and to act with ethics and integrity in their conduct. See our article on [Torts: Negligence and Intentional](#) for a fuller discussion of the remedies available.

But this writer remembers a conversation with a German company owner once that perhaps summarizes best the situation. He was bemoaning the cost of insurance to begin operations in America and then glumly commented that one of his best sellers, a product that removed staples, could not be insured in America at all due to some "unfortunate" accidents. "It doesn't do that much injury so in Germany no one gets too upset. We write a check to the injured part for a thousand dollars and it does a pretty good job." When I commented that would it not be better to redesign it and eliminate the danger, he shrugged and said it never made economic sense before.

A year later he introduced into the United States the redesigned product. It sold well. No one was injured.