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## **PUNITIVE DAMAGES - IS THERE A FORMULA?**

The United States Supreme Court cases of BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) and State Farm Mutual Automobile Ins. Co. v. Campbell, 538 U.S. 408, 418 (2003) are often cited by lawyers for the proposition that punitive damages may not exceed nine times the amount of a compensatory award. A close reading of those cases shows that is not the law. While both of those cases discuss at length a four to one ratio of punitive damages to compensatory damages as nearing the constitutional limits of due process and in Campbell, supra, the Court stated:

“Single-digit multipliers are more likely to comport with due process, .... “

Neither case sets any specific multiplier as an absolute bar to punitive damages.

The Florida Supreme Court in Engle v. Liggett Group, Inc., et al., 32 Fla. L. Weekly 1 (Jan. 5, 2007) had an opportunity to establish the outer constitutional limits of punitive damages in the State of Florida. Prior to Engle, the appellate courts of Florida had not even discussed the issue of the relationship between the amount of compensatory damages awarded and the amount of punitive damages. In Owens-Corning Fiberglass Corp. v. Ballard, 749 So. 2d 483 (Fla. 1999), a punitive damage award of \$31 million was approved where the compensatory damages were \$1.8 million. Thus, the punitive damages were 18 times the amount of the compensatory award.

The landmark case on punitive damages in Florida is Ault v. Lohr, 538 So. 2d 454 (Fla. 1989). In that case, a jury awarded zero dollars compensatory damages and \$5,000.00 in punitive damages. The Supreme Court of Florida upheld the award concluding that actual physical damage was not necessary for a punitive award. Quoting Lassiter v. International Union of Operating Engineers, 349 So. 2d 622, 625 (Fla. 1976), the Court stated

*“Nominal damages are awarded to vindicate an invasion of one’s legal rights where, although no physical or financial injury has been inflicted, the underlying cause of action has been proved to the satisfaction of the jury. Accordingly, the establishment of liability for a breach of duty will support an otherwise valid punitive award even in the absence of financial loss for which compensatory damages would be appropriate.”*  
(emphasis by the Court).

In Arab Termite and Pest Control of Florida, Inc. v. Jenkins, 409 So. 2d 1039, 1043 (Fla. 1982), the Court stated that punitive damages:

*“are to be measured by the enormity of the offense, entirely aside from the measure of compensation for the injured plaintiff.”*

In Engle, supra, a \$145 billion punitive damage award was reversed for, among other reasons, its excessiveness. The Court held, for the first time that, consistent with the U.S. Supreme Court findings in Gore and Campbell, appellate review of a punitive damage award must include a determination as to whether the award of punitive damages bears a reasonable relationship to the award of compensation. The Court did not hold that either Gore or Campbell establishes a specific ratio beyond which punitive damages may not extend. A

close reading of both Campbell and Gore would not justify such a holding. Both of those cases were property damage cases rather than personal injury suits. Indeed, both Campbell and Gore refer to the fact that a higher punitive damage award might well be justified depending upon the severity of the physical damage suffered by a plaintiff. Florida Courts have consistently found that the most important factor in determining the reasonableness of a punitive damage award, is the extent of outrageousness of the conduct of the Defendant. See Arab Termite, supra.

In Engle, the Court cites with approval in Campbell at Page 424 – 26 that:

“[W]e have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award. *TXO [Production Corp. v. Alliance Resources Corp., 509 U.S.]* at 458. We decline again to impose a bright-line ratio which a punitive damage award cannot exceed.”

While Campbell goes on to state that single-digit multipliers are more likely to comport with due process (thus leading to the off cited nine to one limit), that Court also reflects that a much higher ratio may well be justified where the amount of compensatory damages are small and a lesser ratio may be all that is necessary where compensatory damages are very large. Nevertheless, Campbell concludes that there are “no rigid bench marks that a punitive damages award may not surpass.”

Campbell, Gore and now Engle hold that there are three determinates which must be reviewed when an award of punitive damages is alleged to be unconstitutional and excessive.

“(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.”

Engle v Liggett, supra, will be oft cited for many reasons. It is a landmark decision in tobacco litigation, class actions and punitive damages. On the issue of punitive damages, it holds that an arbitrary relationship between the amount of a compensatory award and the amount of punitive damages awarded does not exist.

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