

Casenote

Whoa, Slow Down! Applying the Constitutional Brakes to Accelerated Punitive Damages Awards

In *State Farm Mutual Automobile Insurance Co. v. Campbell*,¹ the United States Supreme Court held that a \$145 million punitive damages award violates the Due Process Clause of the Fourteenth Amendment when compensatory damages are merely \$1 million.² This decision was neither the first of its kind, nor unexpected, considering the Court's trend in recent years. Nonetheless, the Court has not always been so aggressive in its application of the Due Process Clause to punitive damages awards.

I. FACTUAL BACKGROUND

In 1981 Curtis Campbell ("Campbell") and his wife, Inez, were driving along a two-lane highway in Utah. In front of them was a group of six vans, one of which was driven by Robert Slusher ("Slusher"). Campbell attempted to pass the caravan. At the same time, Todd Ospital ("Ospital") was driving a vehicle in the opposite direction. To prevent a head-on collision with Campbell, Ospital swerved onto the shoulder.

1. 123 S. Ct. 1513 (2003).

2. *Id.* at 1526.

Ospital lost control of his vehicle and crashed into the van driven by Slusher. As a result, Ospital was killed and Slusher was seriously injured. The Campbells were unhurt.³

Slusher brought a tort action against Ospital's estate and Campbell. The Ospital estate filed a cross-claim for wrongful death against Campbell. Campbell responded by asserting he was not at fault. Campbell's insurance carrier, State Farm Mutual Automobile Insurance Company ("State Farm"), assigned Ray Summers ("Summers"), a claims adjuster, to analyze the claims. Although initial investigations were inconclusive, Summers discovered that all of the eyewitnesses believed Campbell was the primary cause of the accident. Furthermore, photographs of the scene and skid-marks appeared to corroborate the eyewitnesses' beliefs. Summers concluded that taking the claims to trial would expose Campbell to a high probability of a judgment in excess of his \$50,000 policy limit. Therefore, Summers advised State Farm that it would be wise to settle the claims. Despite the physical evidence and Summers's evaluation, State Farm decided to contest liability. State Farm's divisional superintendent ordered Summers to alter his report concerning Campbell's liability. State Farm did not notify Campbell of Summers's evaluation and findings, nor did State Farm tell Campbell that he would be legally liable if he was found even partially at fault. Instead, State Farm assured Campbell there was no evidence supporting his liability and told him there was no danger of a judgment being rendered in excess of his policy limit.⁴

Before trial State Farm declined numerous offers by the Ospital estate and Slusher to settle their claims for the policy limit of \$50,000 (\$25,000 per claimant). At trial in 1983, a jury found Campbell to be 100 percent at fault and rendered verdicts against him totaling \$185,849 (after jury offsets). State Farm informed Campbell that it would pay the policy limits, but the difference was Campbell's liability. State Farm moved for a new trial or, alternatively, judgment notwithstanding the verdict. The motions were denied and judgments were entered in favor of Ospital's estate and Slusher. State Farm appealed. Campbell retained his own counsel regarding the excess judgment and provided information about his assets. State Farm refused demands by Campbell, Slusher, and Ospital's estate to pay the full amount of the excess verdict. It maintained this stance for the next three years.⁵

In January of 1984, the parties reached an agreement whereby Campbell agreed to seek a bad faith action against State Farm. Slusher

3. Campbell v. State Farm Mut. Auto. Ins. Co., 840 P.2d 130, 132 (Utah Ct. App. 1992).

4. *Id.* at 133-34.

5. *Id.* at 134-36.

and the Ospital estate would receive ninety percent of any recovery, equally divided. In exchange the Ospital estate and Slusher agreed not to seek satisfaction of their claims against Campbell's personal assets. In July 1986 Campbell filed suit against State Farm for bad faith.⁶ The suit was dismissed "pending the final disposition of the underlying action against Campbell."⁷ Ultimately, in June 1989, the Utah Supreme Court affirmed the judgments against Campbell. The next month State Farm paid the entire \$185,849 judgment.⁸

In August of 1989, Campbell filed another complaint against State Farm alleging: "1) a breach of the implied covenant of good faith and fair dealing; 2) the tort of bad faith; 3) a breach of fiduciary duty; 4) fraudulent misrepresentation; and 5) intentional infliction of emotional distress."⁹ Campbell further claimed State Farm's conduct warranted punitive damages because it acted maliciously, deliberately, and with a conscious disregard of Campbell's interests.¹⁰ State Farm moved for summary judgment, and the district court granted its motion because "the insurer immediately satisfied the entire excess judgment when it became final."¹¹

The Utah Court of Appeals reversed the trial court and remanded the case.¹² The court determined that "material facts [existed] . . . which, if believed, might lead a jury to conclude that State Farm acted in bad faith."¹³ On remand State Farm moved "*in limine* to exclude evidence of alleged conduct that occurred in unrelated cases outside of Utah."¹⁴ The trial court denied the motion. However, the court granted State Farm's motion to bifurcate the trial into two phases, each with different juries. The first phase would determine State Farm's liability. If State Farm was found liable, the second phase would take place to address damages.¹⁵

The jury in the first phase found State Farm's decision not to settle unreasonable because evidence demonstrated "there was a substantial likelihood of an excess verdict."¹⁶ Before the second phase, State Farm again moved to exclude evidence concerning dissimilar out-of-state

6. *Id.* at 135.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 136.

11. *Id.*

12. *Id.* at 143.

13. *Id.* at 141.

14. *State Farm*, 123 S. Ct. at 1518.

15. *Id.*

16. *Id.*

conduct based on the Supreme Court's recent decision in *BMW of North America, Inc. v. Gore*.¹⁷ The trial court denied this motion, finding such out-of-state conduct admissible evidence because it could establish "whether State Farm's conduct . . . was indeed intentional and sufficiently egregious to warrant punitive damages."¹⁸

In the second phase, State Farm argued that its decision to take Campbell's case to trial was an "honest mistake," and thus punitive damages were not warranted.¹⁹ To counter this assertion, Campbell introduced evidence of State Farm's business practices for over twenty years in different states.²⁰ This evidence revealed a "national scheme" whereby State Farm sought to meet corporate goals by capping payouts on claims.²¹ This nationwide scheme "was referred to as the 'Performance, Planning, and Review,' or 'PP & R,' policy."²² Campbell claimed that State Farm's decision to take his particular third-party claim to trial was a result of this national scheme. To demonstrate the existence of the PP & R policy, Campbell introduced expert testimony concerning State Farm's fraudulent practices in its nationwide operations.²³ Consequently, "the jury awarded [Campbell] \$2.6 million in compensatory damages, and \$145 million in punitive damages."²⁴ The court denied all of State Farm's motions for judgment notwithstanding the verdict.²⁵ Nevertheless, the trial court ordered a remittitur of damages to "\$1 million in compensatory damages and \$25 million in punitive damages."²⁶ Both parties appealed.²⁷

The appeal went before the Utah Supreme Court in October of 2001. The court determined that under Utah law, there were several factors to consider:

- (i) the relative wealth of the defendant; (ii) the nature of the alleged misconduct; (iii) the facts and circumstances surrounding such conduct; (iv) the effect thereof on the lives of the plaintiff and others; (v) the probability of future recurrence of the misconduct; (vi) the relationship of the parties; and (vii) the amount of actual damages awarded.²⁸

17. 517 U.S. 559 (1996).

18. *State Farm*, 123 S. Ct. at 1518-19.

19. *Campbell v. State Farm Mut. Auto. Ins. Co.*, 65 P.3d 1134, 1143 (Utah 2001).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 1145.

28. *Id.* at 1145-46.

After separately analyzing the factors, the court concluded that the punitive damages award was appropriate.²⁹ However, the court disagreed with the trial court's analysis of factor seven and its subsequent decision to remit the punitive damages to \$25 million.³⁰ The court stated that "if the other six factors support a large punitive damages award, a judge should not decrease the amount solely because of the ratio of punitive to compensatory damages."³¹

The Utah Supreme Court then analyzed federal law and applied the three guideposts the Supreme Court identified in *Gore* to the issue of whether punitive damages are grossly excessive.³² As it did in analyzing the second and third state factors, the court looked at the evidence Campbell presented regarding State Farm's nationwide PP & R policy and held that State Farm's conduct was reprehensible.³³ The court concluded that the ratio between compensatory and punitive damages was reasonable.³⁴ In doing so, the court noted, "State Farm's fraudulent conduct has been a consistent way of doing business for the last twenty years . . ."³⁵ Furthermore, the court noted that State Farm would likely continue its misconduct as evidenced by its actions toward the Campbells "despite a previous \$100 million punitive damages award."³⁶ Finally, statistical probability demonstrated that State Farm would be punished in only one out of every 50,000 cases; thus, "the harm propagated by State Farm is [comparatively] extreme . . ."³⁷

Finally, the court compared the punitive damages award to other civil and criminal penalties that could possibly be imposed upon State Farm.³⁸ The court determined that the punitive damages were not excessive when compared with a "\$10,000 fine for each act of fraud, the suspension of [State Farm's] license to conduct business in Utah, the disgorgement of profits, and imprisonment."³⁹ Therefore, the court reinstated the \$145 million punitive damages award.⁴⁰ State Farm appealed, and the United States Supreme Court granted certiorari.⁴¹

29. *Id.* at 1152.

30. *Id.* at 1151.

31. *Id.*

32. *Id.* at 1152 (citing *Gore*, 517 U.S. at 568).

33. *Id.*

34. *Id.* at 1154.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 1154-55.

39. *State Farm*, 123 S. Ct. at 1519.

40. *Campbell*, 65 P.3d at 1155.

41. 535 U.S. 1111 (2003).

In a 6-3 decision, the United States Supreme Court held that when compensatory damages are \$1 million, the award of \$145 million in punitive damages is excessive and violates the Due Process Clause of the Fourteenth Amendment.⁴²

II. LEGAL BACKGROUND

A deeply ingrained principle of common law is that in tort actions, a jury may impose punitive damages based upon the enormity of the offense.⁴³ The common-law approach for awarding punitive damages has been for a jury to initially determine the amount.⁴⁴ Before deliberating, the jury is instructed to assess the punitive award by considering the gravity of the wrong and the need for deterrence of similar conduct.⁴⁵ The jury's determination "is then reviewed by trial and appellate courts to ensure that it is reasonable."⁴⁶ Before the ratification of the Fourteenth Amendment, the Supreme Court approved this common-law approach to assessing punitive damages.⁴⁷ In *Day v. Woodworth*,⁴⁸ the Court held that the assessment "has always been left to the discretion of the jury, as the degree of punishment to be thus inflicted must depend on the peculiar circumstances of each case."⁴⁹ Even after the adoption of the Fourteenth Amendment, the Court adhered to the common-law assessment of punitive damages.⁵⁰ In assessing punitive damages, "[t]he discretion of the jury . . . is not controlled by any very definite rules; yet the wisdom of allowing such additional damages to be given is attested by the long continuance of the practice."⁵¹

Nonetheless, one cannot overlook the substantive and procedural importance of the Fourteenth Amendment and the Due Process Clause contained therein. The Fourteenth Amendment provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

42. *State Farm*, 123 S. Ct. at 1526.

43. *Day v. Woodworth*, 54 U.S. 363, 371 (1851).

44. *Id.*

45. *Id.*

46. *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 15 (1991).

47. *See, e.g., Day*, 54 U.S. at 363.

48. 54 U.S. 363 (1851).

49. *Id.* at 371.

50. *See Missouri Pac. Ry. Co. v. Humes*, 115 U.S. 512 (1885); *Barry v. Edmunds*, 116 U.S. 550 (1886); *Minneapolis & St. Louis Ry. Co. v. Beckwith*, 129 U.S. 26 (1889); *Standard Oil Co. of Ind. v. Missouri*, 224 U.S. 270 (1912).

51. *Humes*, 115 U.S. at 521.

person of life, liberty, or property, without due process of law. . . .”⁵² The application of the Due Process Clause to a state’s imposition of punitive damages has been addressed by the Court on many previous occasions.⁵³ In *Seaboard Air Line Railway Co. v. Seegers*,⁵⁴ the Court made a vague determination that the Due Process Clause establishes certain substantive limits beyond which a state may not impose a penalty.⁵⁵ However, the Court failed to provide any guidance regarding the limits of punitive damages.⁵⁶ Future holdings proved no more helpful because the Court appeared to go through different stages of interpretation. Initially, the Court made tactful “dance steps” around the issue; then the Court demonstrated an air of reluctance to limit punitive damages; finally, the Court began to arbitrarily limit punitive damages through the procedural and substantive aspects of the Due Process Clause.

A. *Dancing Around the Issue*

Numerous cases have come before the Supreme Court in which the appellant challenged a state court’s imposition of a punitive damage award. For years the Court declined to directly address whether a punitive damages amount could violate the Fourteenth Amendment. In *Aetna Life Insurance Co. v. Lavoie*,⁵⁷ one of appellant’s arguments was that Alabama’s lack of sufficient standards governing the imposition of punitive damages violated the Due Process Clause.⁵⁸ Having decided that the state justice’s biased participation in the trial violated appellant’s due process rights, the Court found it unnecessary to address the issue of punitive damages.⁵⁹ However, the Court stated that the argument raised important issues, “which, in an appropriate setting, must be resolved.”⁶⁰

Two years later an opportunity for “an appropriate setting” presented itself. In *Bankers Life & Casualty Co. v. Crenshaw*,⁶¹ defendant, a life

52. U.S. CONST. amend. XIV, § 1.

53. See *Seaboard Air Line Ry. Co. v. Seegers*, 207 U.S. 73 (1907); *St. Louis, Iron Mountain & S. Ry. Co. v. Williams*, 251 U.S. 63 (1919); *Standard Oil Co. of Ind.*, 224 U.S. 270; *S.W. Tel. & Tel. Co. v. Danaher*, 238 U.S. 482 (1915); *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86 (1909).

54. 207 U.S. 73 (1907).

55. *Id.* at 78-79.

56. See *id.*

57. 475 U.S. 813 (1986).

58. *Id.* at 828.

59. *Id.* at 827-28.

60. *Id.* at 828-29.

61. 486 U.S. 71 (1988).

insurance company, appealed a \$1.6 million punitive damages award.⁶² The Court refused to decide whether the size of the award violated any provisions of the Constitution.⁶³ Instead, the Court concluded that “these claims were not raised and passed upon in the state court” and declined to reach them at this stage of litigation.⁶⁴ Similarly, in *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*,⁶⁵ the Court refused to inquire whether the Due Process Clause establishes outer limits on the size of punitive damages because appellant failed to raise the due process argument in the lower courts.⁶⁶ However, the Court did narrow the issue—“whether due process acts as a check on undue discretion to award punitive damages in the absence of any express statutory limit.”⁶⁷

B. Reluctance by the Court to Directly Curtail the Amount of Punitive Damages

While previous opinions demonstrated the Court’s acknowledgement that the Due Process Clause might establish some substantive boundary on punitive damage awards, the Court seemed reluctant to establish that boundary when forced to directly address the issue. In *Pacific Mutual Life Insurance Co. v. Haslip*,⁶⁸ Pacific Mutual appealed a jury’s assessment of punitive damages, claiming the award violated its due process rights. The suit was initiated when several insured employees of an Alabama municipality brought suit against Pacific Mutual alleging fraud.⁶⁹ The jury returned general verdicts for the insured employees totaling \$1,077,978.⁷⁰ These verdicts represented both compensatory and punitive damages; however, the relative amount of punitive damages represented more than four times the amount of the compensatory damages.⁷¹ The Alabama Supreme Court upheld the verdict, with two justices dissenting.⁷²

Before analyzing the case, the Court voiced its “doubts about the constitutionality of certain punitive damages awards.”⁷³ The Court

62. *Id.* at 76.

63. *Id.*

64. *Id.* at 76-77.

65. 492 U.S. 257 (1989).

66. *Id.* at 277.

67. *Id.*

68. 499 U.S. 1 (1991).

69. *Id.* at 6.

70. *Id.* at 6-7.

71. *Id.* at 23.

72. *Id.* at 7.

73. *Id.* at 9.

then acknowledged the interface between a punitive damage amount and the Due Process Clause of the Fourteenth Amendment.⁷⁴ The Court's analysis first focused on the constitutionality of the common-law method for assessing punitive damages.⁷⁵ After reviewing past decisions, the Court stated, "[W]e cannot say that the common-law method for assessing punitive damages is so inherently unfair as to deny due process and be *per se* unconstitutional."⁷⁶ However, the Court recognized that unlimited jury or judicial discretion in the assessment of punitive damages may yield excessive verdicts that "jar one's constitutional sensibilities."⁷⁷ Despite this rhetoric, the Court refused to draw a "mathematical bright line" between constitutionally acceptable and unacceptable punitive damages awards.⁷⁸ Instead, the Court stated that "general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus."⁷⁹ As a result, the Court closely examined the instructions to the jury.⁸⁰ The trial court told the jury that the purpose of punitive damages was not to compensate the injured victim but to punish the defendant and to deter the defendant and others from committing similar misconduct in the future.⁸¹ The Court found the instructions sufficiently narrow to pass constitutional muster because the discretion "was confined to deterrence and retribution, the state policy concerns sought to be advanced."⁸² The Court concluded that the necessary objective criteria existed for the punitive award to be constitutional.⁸³ The Court supported its conclusion by stating, "As long as the discretion is exercised within reasonable constraints, due process is satisfied."⁸⁴

Two years later, the Court again was presented with an opportunity to establish a more finite determination for the constitutionality of a punitive damages award in *TXO Production Corp. v. Alliance Resources Corp.*⁸⁵ Although the Court again recognized the existence of precedent appearing to impose substantive limits on punitive damage awards, the

74. *Id.* at 11 (citing *Crenshaw*, 486 U.S. 71; *Lavoie*, 475 U.S. 813).

75. *Id.* at 15.

76. *Id.* at 17.

77. *Id.* at 18.

78. *Id.*

79. *Id.*

80. *Id.* at 19.

81. *Id.*

82. *Id.*

83. *Id.* at 23-24.

84. *Id.* at 20.

85. 509 U.S. 443 (1993).

Court affirmed a jury verdict of \$10 million in punitive damages when compensatory damages were merely \$19,000.⁸⁶ The appellant urged the Court to heighten the scrutiny level by applying objective criteria, which would comport with “fundamental fairness” inherent in the concept of due process of law.⁸⁷ The Court, however, cited *Haslip*, in which it refused to “draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit in every case.”⁸⁸ The Court concluded that the disparity between an award of punitive and actual damages was not controlling when deciding the constitutionality of the punitive award.⁸⁹ The Court “consider[ed] the magnitude of the *potential harm* that the defendant’s conduct would have caused . . . as well as the possible harm to other victims.”⁹⁰ Thus, the punitive award was determined not to violate the Due Process Clause.⁹¹

C. The Court Begins to Draw an Arbitrary Boundary of Punitive Damage Limits vis-à-vis the Fourteenth Amendment

One year after *TXO*, the Court maneuvered a reversal of a punitive damages award without establishing any kind of substantive limit. In *Honda Motor Co. v. Oberg*,⁹² the Court did not concern itself with substantive characteristics of “excessive punitive damages” but instead focused on the procedures “necessary to ensure that punitive damages are not imposed in an arbitrary manner.”⁹³ An Oregon jury awarded Oberg \$919,390 in compensatory damages and \$5 million in punitive damages.⁹⁴ Although Oregon law provided the jury with discretion to determine the punitive amount, Oregon’s judicial review differed dramatically from common law in that Oregon provided no procedure for altering or reducing a punitive award if the defendant’s only basis of appeal was its objection to the amount of the award.⁹⁵

Honda appealed contending that the Due Process Clause was violated because the punitive damage award was excessive and Oregon courts lacked the power to alter excessive verdicts.⁹⁶ Because Oregon’s

86. *Id.* at 466.

87. *Id.* at 455.

88. *Id.* at 458 (quoting *Haslip*, 499 U.S. at 18).

89. *Id.* at 459-60.

90. *Id.* at 460.

91. *Id.* at 465-66.

92. 512 U.S. 415 (1994).

93. *Id.* at 420.

94. *Id.* at 418.

95. *Id.* at 418-19.

96. *Id.* at 418.

judicial review of punitive damages awards departed from traditional procedures, the Court limited the issue to “whether the Due Process Clause requires judicial review of the amount of punitive damage awards.”⁹⁷ The Court held that Oregon’s practice provided no protection to ensure that the defendant was not subjected to an arbitrary amount of punitive damages.⁹⁸ The Court stated that the “whole purpose” of the Due Process Clause was to prevent “arbitrary deprivations of liberty or property.”⁹⁹ Therefore, judicial review upon a defendant’s objection to the amount is a necessary aspect of due process because the jury is given wide discretion in determining the amount.¹⁰⁰ As a result, the Court concluded that Oregon’s denial of judicial review did not comply with the Due Process Clause.¹⁰¹

In *Honda* the Court demonstrated its willingness to find a punitive damages award unconstitutional vis-à-vis the procedural aspect of the Due Process Clause.¹⁰² Nonetheless, as the Court noted, the common-law practice of judicial review was applied by every other state.¹⁰³ Thus, it was doubtful the Court would be confronted with a similar case in which it could reverse a punitive award based on an unconstitutional procedural method. The next time the Court was presented with a case concerning the constitutionality of punitive damages, it would have to again struggle with what, if any, substantive limits are imposed by the Due Process Clause, and if there are limits, how those limits are to be determined.

The Court received its chance in *BMW of North America, Inc. v. Gore*,¹⁰⁴ in which a jury entered a verdict in the amounts of \$4000 in compensatory damages and \$4 million in punitive damages.¹⁰⁵ Defendants appealed, contending the punitive amount was not constitutionally permissible.¹⁰⁶ The Alabama Supreme Court reduced the punitive award to \$2 million because the jury computed the original amount by considering BMW’s conduct in other jurisdictions.¹⁰⁷ BMW appealed,

97. *Id.* at 420.

98. *Id.* at 429.

99. *Id.* at 434.

100. *Id.* at 434-35.

101. *Id.* at 435.

102. *See id.* at 432-35.

103. *Id.* at 426.

104. 517 U.S. 559 (1996).

105. *Id.* at 565.

106. *Id.* at 566.

107. *Id.* at 567.

and the Supreme Court granted certiorari to identify the character of unconstitutionally excessive punitive damages awards.¹⁰⁸

The Court first held that Alabama lacked the power to punish a national corporation “for conduct that was lawful where it occurred and that had no impact on Alabama or its residents.”¹⁰⁹ However, the Alabama Supreme Court reduced the punitive amount because the jury improperly considered BMW’s out-of-state conduct.¹¹⁰ Consequently, the Court had to look elsewhere to identify the character of an excessive award.¹¹¹ The Court subsequently inquired into the “[e]lementary notions of fairness enshrined in our constitutional jurisprudence.”¹¹² From this inquiry, the Court developed the concept of “fair notice,” according to which a person must receive notice of conduct capable of being punished and the severity of the penalty.¹¹³ The Court thus created “three guideposts” to analyze whether BMW received adequate notice of the degree of the sanction Alabama could impose.¹¹⁴

The first guidepost was “the degree of reprehensibility of the defendant’s conduct.”¹¹⁵ This was described as “perhaps the most important indicium of the reasonableness of a punitive damages award,”¹¹⁶ because punitive damages should mirror “the enormity of the offense.”¹¹⁷ When examining this guidepost, the Court found that Gore’s injury was purely economic.¹¹⁸ Moreover, the record showed that BMW made “no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO*.”¹¹⁹ As a result, the Court concluded that BMW’s conduct was not sufficiently reprehensible to justify a \$2 million punitive damages award.¹²⁰

The second guidepost was the ratio of the punitive damages award to the actual harm suffered by the plaintiff.¹²¹ The Court noted that its decisions in both *Haslip* and *TXO* supported a comparison between the

108. *Id.* at 568.

109. *Id.* at 572-73.

110. *Id.* at 567, 573.

111. *Id.* at 573-74.

112. *Id.* at 574.

113. *Id.*

114. *Id.* at 574-75.

115. *Id.* at 575.

116. *Id.*

117. *Id.* (quoting *Day*, 54 U.S. at 371).

118. *Id.* at 576.

119. *Id.* at 579.

120. *Id.* at 580.

121. *Id.*

two amounts.¹²² The punitive damages award imposed against BMW was 500 times more than the amount of actual damages, but considering potential future harm was not appropriate because there was no evidence that Gore or any other car buyer in Alabama was threatened by BMW's conduct.¹²³ As a result, the Court concluded that the disparity between the punitive damages amount and the actual damages amount was distinguishable from previous cases in which the Court upheld the punitive award.¹²⁴

The third and final guidepost created by the Court was “[c]omparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct.”¹²⁵ Under Alabama law, the misconduct of the type BMW perpetrated was subject to a penalty of \$2000.¹²⁶ Other states authorized a penalty up to \$10,000.¹²⁷ Nevertheless, the Court stated that none of these statutes provided BMW with notice that violations thereof would subject BMW to a multi-million dollar penalty.¹²⁸

After considering the three guideposts, the Court was “fully convinced that the grossly excessive award in this case transcend[ed] the constitutional limit.”¹²⁹ Despite this firm conviction, the Court ended its opinion by again emphasizing its refusal to create a substantive bright line whereby the constitutional boundaries of punitive damages awards could be mathematically calculated.¹³⁰ However, the Court did state, “[w]hen the ratio is a breathtaking 500 to 1, . . . the award must surely ‘raise a suspicious judicial eyebrow.’”¹³¹

Five years later the Court addressed the *Gore* guideposts in a limited manner in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*¹³² The Court held that the courts of appeals should apply a de novo standard of review when considering the three *Gore* factors.¹³³ However, this decision did little to clarify the substantive limits of punitive damages as defined by the Court's *Gore* guideposts.

122. *Id.* at 581.

123. *Id.* at 582.

124. *Id.*

125. *Id.* at 583.

126. *Id.* at 584.

127. *Id.*

128. *Id.*

129. *Id.* at 585-86.

130. *Id.* at 585.

131. *Id.* at 583 (quoting *TXO*, 509 U.S. at 481 (O'Connor, J., dissenting)).

132. 532 U.S. 424 (2001).

133. *Id.* at 443.

III. THE COURT'S RATIONALE

In *State Farm Mutual Automobile Insurance Co. v. Campbell*,¹³⁴ the Court reiterated its concern that “[w]hile States possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards.”¹³⁵ The Court further stated that “grossly excessive or arbitrary punishments on a tortfeasor” are prohibited by the Due Process Clause of the Fourteenth Amendment.¹³⁶ Another concern of the Court was the information given to the jury and the jury’s subsequent wide degree of discretion in assessing punitive damages.¹³⁷

To pacify its concerns, the Court explicitly relied on *Gore*, analyzing each of the three guideposts in detail.¹³⁸ In addressing the degree of reprehensibility of a defendant’s conduct, the Court enumerated several factors to consider when gauging the degree of reprehensibility:

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.¹³⁹

The Court further elaborated that the existence of any one of these factors does not render a defendant’s conduct wholly reprehensible to justify a particular punitive award.¹⁴⁰ The Court applied this reasoning to the instant case and found that several of the factors were satisfied.¹⁴¹ The lower court found that State Farm’s agent altered the company’s report regarding Campbell’s culpability; State Farm disregarded the high probability that taking the case to trial would yield a verdict in excess of Campbell’s policy limit; and State Farm intensified the harm by assuring the safety of Campbell’s assets and then telling him to sell his house.¹⁴² Despite these facts tending to demonstrate State Farm’s conduct as significantly reprehensible, the Court stated, “[A] more modest punishment for this reprehensible conduct could have

134. 123 S. Ct. 1513 (2003).

135. *Id.* at 1519.

136. *Id.*

137. *Id.* at 1520.

138. *Id.* at 1521.

139. *Id.* (citing *Gore*, 517 U.S. at 576-77).

140. *Id.*

141. *Id.*

142. *Id.*

satisfied the State's legitimate objectives, and the Utah courts should have gone no further."¹⁴³

Instead of limiting the focus of State Farm's conduct to in-state activities, Campbell sought to expose State Farm's activities performed nationwide ("PP & R policy").¹⁴⁴ As the Court established in *Gore*, a state cannot impose sanctions for the purpose of deterring or punishing conduct that may be lawful in jurisdictions where it occurred.¹⁴⁵ Although Campbell asserted that State Farm's out-of-state conduct provided evidence of a general motive against them, the Court concluded that the out-of-state conduct bore no relationship to the specific harm suffered by Campbell.¹⁴⁶ Moreover, "[a] defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages."¹⁴⁷ For similar reasons, the Court refused to view State Farm as a recidivist because no evidence demonstrated that State Farm previously engaged in the type of misconduct that injured Campbell in Utah.¹⁴⁸ The Court conceded that "evidence of other acts need not be identical to have relevance in the calculation of punitive damages."¹⁴⁹ However, the Court held that evidence introduced by Campbell regarding the underpaying of a first-party claimant had nothing to do with a third-party suit.¹⁵⁰

The second *Gore* guidepost concerned the disparity between actual or potential harm suffered and the punitive damages award.¹⁵¹ Before addressing this guidepost, as it applied to the *Campbell* case, the Court admitted it had "been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award."¹⁵² Despite this admission, the Court again refused to draw a bright line mathematical formula limiting such awards.¹⁵³ Nevertheless, the Court reviewed past precedent and stated that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."¹⁵⁴ The Court cited dicta in *Haslip*, stating that a 4-to-1

143. *Id.*

144. *Id.* at 1521-22.

145. *Id.* at 1522.

146. *Id.* at 1523.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 1523-24.

151. *Id.* at 1524.

152. *Id.*

153. *Id.*

154. *Id.*

ratio between a punitive amount and a compensatory amount “might be close to the line of constitutional impropriety.”¹⁵⁵ The Court further stated that this 4-to-1 ratio was also cited in *Gore*.¹⁵⁶ Although the Court did not consider these ratios binding, it did find them instructive.¹⁵⁷ The Court reasoned that a punitive damages award within a single-digit multiplier of a compensatory damages award would more likely comport with due process than a ratio of 145-to-1, like this case.¹⁵⁸ However, the Court stated that higher ratios may also comport with due process when the defendant’s misconduct is particularly egregious.¹⁵⁹

The Court subsequently looked to the particular facts of this case to determine if State Farm’s conduct was sufficiently egregious to warrant a punitive damages award of \$145 million when compensatory damages were \$1 million.¹⁶⁰ The Court attached significance to the fact that the injury was economic, not physical.¹⁶¹ Also, because State Farm paid the excess verdict, Campbell suffered a relatively short period of economic injury.¹⁶²

The Court found the Utah Supreme Court’s justifications for the massive punitive award unconvincing.¹⁶³ The failure of State Farm to report a prior \$100 million punitive damages award to its corporate headquarters was of no relevance because the conduct that resulted in the Texas lawsuit was dissimilar (i.e., a first-party lawsuit).¹⁶⁴ Further, the Utah Supreme Court’s reliance upon the statistical probability of State Farm being punished and State Farm’s wealth bore “no relation to the award’s reasonableness or proportionality to the harm” actually suffered by Campbell.¹⁶⁵

The third and final *Gore* guidepost concerned “the disparity between the punitive damages award and the ‘civil penalties authorized or imposed in comparable cases.’”¹⁶⁶ The Court stated that a criminal penalty is relevant only in considering the seriousness of the defendant’s

155. *Id.* (citing *Haslip*, 499 U.S. at 23-24).

156. *Id.* (citing *Gore*, 517 U.S. at 581).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 1524-25.

161. *Id.* at 1525.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 1526 (quoting *Gore*, 517 U.S. at 575).

misconduct, not in determining the amount of a punitive award.¹⁶⁷ No applicable criminal penalties existed under Utah law, and the only relevant civil sanction was a \$10,000 fine for an act of fraud.¹⁶⁸ The Court noted that the \$10,000 fine was “dwarfed by the \$145 million punitive damages award.”¹⁶⁹ The Utah Supreme Court also supported the disparity by alluding to State Farm’s possible loss of its business license, profit disgorgement, and potential imprisonment.¹⁷⁰ However, the Court determined that these factors were references to State Farm’s “broad fraudulent scheme drawn from evidence of out-of-state and dissimilar conduct” and irrelevant in determining the punitive damage award.¹⁷¹ Therefore, the Court held that the analysis was insufficient to warrant the punitive award.¹⁷²

IV. IMPLICATIONS

Since its inception in 1865, the Fourteenth Amendment established procedural, and later substantive, due process limits applicable to the states. The Fourteenth Amendment was ratified during the post-Civil War Era to do exactly what occurred in *State Farm Mutual Automobile Insurance Co. v. Campbell*¹⁷³—to limit the power of the sovereign states. In *Campbell* the Court flexed the substantive due process muscles of the Fourteenth Amendment and curbed a punitive damages award. As a result of the *Campbell* decision, state courts will certainly be more conscious about the amount of a punitive damages award. As the Court did in *Campbell*, state courts must analyze the constitutionality of a punitive damages award by applying the three *Gore* factors. However, as demonstrated in this case, the application of these factors can be far from precise. What the Court appeared to be struggling with (and will likely struggle with in the future) is a way to quantify due process.

At times there can be a dichotomy in the analysis of the factors, and this dichotomy leads to ambiguity. For example, a court could find a defendant’s conduct to be significantly reprehensible by meeting all the criteria set forth in *Campbell*; nonetheless, that same court would be tentative in awarding punitive damages over a single-digit multiplier of the compensatory damages amount. Thus, a court is put in a position

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. 123 S. Ct. 1513 (2003).

in which the State's legitimate interests in punishment and deterrence are in conflict with the Constitution. Although the decision in *Campbell* stated that the amount of punitive damages will depend on the particular facts, the Court's application of the ratio factor in this case makes one suspect as to what degree of reprehensibility would warrant a higher punitive award. The Court explicitly refused to draw a mathematical bright line between constitutionally acceptable and constitutionally unacceptable punitive damages awards. Nevertheless, the court did establish a mathematical "line" with the single-digit ratio formula. This "line" will likely cause uncertainty and confusion among courts in the future.

Moreover, the Court's refusal to consider out-of-state conduct is contrary to the business and economic realities of modern society. In today's business world, companies strive to establish a multi-state customer base. Furthermore, many companies, like State Farm in this case, are inherently "nationwide." The Court in essence condones a company's nationwide misconduct by stating that the company is only susceptible to punishment for misconduct that occurred in the state of suit.

The Court's decision in *Campbell* did little to clarify exactly how the Due Process Clause of the Fourteenth Amendment substantively limits punitive damages awards. Nonetheless, the decision establishes what state courts cannot do in calculating punitive damages. Despite the indepth analysis of the decision, the application of the *Gore* factors proved to be ambiguous at best. Consequently, the Court will likely be revisited by a case similar to *Campbell* in the future because the lack of concrete objective criteria will result in subjective interpretation.

J. KAZ ESPY