

Insurance Law Column

Punitive Damages: Debunking Some Post-*Campbell* Myths

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In April 2003, the United States Supreme Court revisited the constitutionality of state court punitive damage awards in *State Farm v. Campbell* (2003) 123 S. Ct. 1513. In that case, insureds alleged claims for bad faith against State Farm Insurance Company in Utah. The jury ultimately awarded \$2.6 million in compensatory damages and \$145 million in punitive damages. The Utah Supreme Court reinstated the \$145 million punitive damages award after it had been reduced by the trial court.

On appeal the United States Supreme Court held that the Utah Supreme Court erred in reinstating the punitive damages verdict. The case was reversed and remanded with due process parameters imposed as a basis for determining the quantum of punitive damages. Since *Campbell*, there have been approximately 150 judicial opinions that have relied on *Campbell* as a basis for determining the constitutionally permissible quantum of punitive damages. Some

distinct myths have emerged from the holdings of the post-*Campbell* judicial opinions.

One **myth** that has emerged from the *Campbell* decision is that a punitive damage award **must** bear a single digit ratio to compensatory damages because anything greater than a single digit ratio constitutes a violation of due process and is constitutionally impermissible.

California Appellate Courts Have Adopted a Bright Line Ratio Contrary to The Specific Holding of *Campbell*

Although *Campbell* **explicitly rejected a bright line ratio**, all five California appellate rulings since *Campbell* appear to interpret the holding as precluding punitive damage awards which exceed a single digit ratio to compensatory damages:

1. *Taylor Woodrow Homes, Inc. v. Acceptance Insurance Companies* 2003 WL 21224088 (Cal.App. 4th District, unpublished opinion). In this insurance bad faith action, the plaintiffs were awarded \$293,000 in compensatory damages. The appellate court reduced the \$5 million punitive damages award to \$1 million. The court appears to have interpreted *Campbell* to *mandate* the reduction of punitive damages stating: “[T]he United States Supreme Court handed down a decision which puts some outside due process limits on punitive damages.” *Id.* at *4 (emphasis added).

2. *Diamond Woodworks, Inc. v. Argonaut Ins. Co.* (2003) 109 Cal. App.4th 1020. In this insurance bad faith judgment the compensatory damages were originally \$658,000 and the punitive damage verdict was \$14 million. The trial court remitted the compensatory damages to \$404,270 and the punitive damages to \$5.5 million. However, relying on *Campbell*, the Fourth District Court of Appeal issued a remittitur reducing the punitive damages even further to \$1 million. The *Diamond Woodworks* court stated: “With regard to the ratio of punitive damages to compensatory damages...we have no doubt that anything exceeding four-to-one would not

comport with due process under *Campbell*.” *Diamond Woodworks, supra*, at 1055.

3. *Henley v. Philip Morris Inc.* (2004, Cal. App. 1 Dist.) 114 Cal. App. 4th 1429. In *Henley*, the appellate court reviewed a \$25 million dollar tobacco related product liability judgment in which the compensatory damages were \$1.5 million. The appellate court, in remitting the judgment to \$9 million, held *Campbell* suggested “**concrete** numerical guidelines for considering whether a particular award violates constitutional restraints” and that “a double digit ratio will be justified **rarely** and **perhaps never** in a case where the plaintiff has recovered an ample award of compensatory damages.” *Henley, supra*, 114 Cal. App. 4th at 1479-1480 (emphasis added).

4. *Romo v. Ford Motor Co.* (2003) 113 Cal. App.4th 738, 6 Cal. Rptr.3d 793. In *Romo*, the jury awarded plaintiffs compensatory damages of almost \$5 million and punitive damages of \$290 million. After affirmance of the judgment by the First District Court of Appeals (*see, Romo v. Ford Motor Co.* (2003) 99 Cal. App.4th 1115, 122 Cal. Rptr.2d 139) the U.S. Supreme Court remanded the case for reconsideration in accord with the holding of *Campbell*. The appellate court, on remand, reduced the \$290 million punitive damage verdict to \$23,723,287 and appears to conclude that *Campbell* mandates a single digit ratio by setting forth a paragraph caption entitled “*Which Single Digit Sufficiently Punishes and Deters?*” *Romo, supra*, 113 Cal. App.4th at 751. The court impliedly rejects any consideration of a ratio which exceeds a single digit ratio by stating:

[a]lthough the need to limit most punitive damages awards to a single-multiplier was obvious to the Supreme Court, there was not a particular single digit ratio that appeared appropriate in all cases.

Id. (emphasis added).

5. *Simon v. San Paolo U.S. Holding Company, Inc.* (2003) 113 Cal. App.4th 1137, 7 Cal.

Rptr.3d 367. In this action, the appellate court held that although the jury awarded \$5,000 in compensatory damages, the actual harm suffered was approximately \$400,000. The court appears to have been guided by a single digit ratio mandate when affirming the \$1.7 million punitive damages award because, when including the actual harm to the insured, the award did not exceed a single digit ratio.

State and Federal Appellate Courts Have Affirmed Punitive Damage Verdicts That Exceed Single Digit Ratios after *Campbell*

Although the U.S. Supreme Court has provided guidelines for testing the constitutionality of punitive damages, the holding in *Campbell* **did not establish a rigid rule of law** requiring that punitive damage awards must bear a ratio of single digits to compensatory damages. In fact, a review of the holding and subsequent decisions by state and federal courts indicates that punitive damages might very well exceed a single digit ratio to compensatory damages. In *Campbell*, the Supreme Court held that:

Our jurisprudence and the principles it has now established demonstrate, however, that in practice *few awards exceeding a single digit ratio between punitive and compensatory damages to a significant degree, will satisfy due process.*

Campbell, supra, at 1524 (emphasis added).

The *Campbell* holding explicitly held that some punitive damage awards will satisfy substantive due process even if exceeding a single digit ratio if the ultimate goal of punishment and deterrence is to be achieved. The court specifically rejected the adoption of concrete or fixed ratios by clearly stating: “We have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award.” *Id.* at 1524.

Explicitly affirming the earlier U.S. Supreme Court holdings of *B.M.W. of North*

America, Inc. v. Gore (1996) 517 U.S. 559 and *T.X.O. Production Corp. v. Alliance Resources Corp.* (1993) 509 U.S. 443, *Campbell* clearly reiterated its earlier rulings and stated that: “We decline **again** to impose a bright line ratio which a punitive damages award cannot exceed.” *Campbell, supra*, at 1524 (emphasis added).

Although the *Campbell* court suggested in some cases (*Gore, supra*, and *Pacific Mutual Life Ins. Co. v. Haslip* (1991) 499 U.S. 1) that a 4 to 1 ratio “might be close to a line of constitutional impropriety,” it is most significant to note that **the court did not overrule its earlier ruling in T.X.O., which affirmed a 526 to 1 ratio.**

Recognizing that in furthering the ultimate goals of deterrence and punishment, some state courts might find it necessary to affirm punitive damage awards which exceed a single digit ratio to compensatory damages, the court further held that:

While these ratios are not binding they are instructive. They demonstrate what should be obvious: single digit multipliers are more likely to comport with due process while still achieving the state’s goal of deterrence and retribution than awards in the range of 500 to 1 . . . there are no rigid benchmarks that a punitive damages award may not surpass.

Campbell, supra, at 1524 (emphasis added).

The court further provided concrete references to the types of cases in which punitive damages verdicts may comport with due process even if they exceed single digit ratios. The court stated that **because there are no rigid benchmarks that a punitive damage award may not surpass**, ratios greater than those we have previously upheld may comport with due process where: (1) a particularly egregious act has resulted in only a small amount of economic damages; (2) where the injury is hard to detect; (3) the monetary value of non-economic harm might have been difficult to determine; or (4) where the harmed individual is financially vulnerable. *Id.* at 1524, relying upon earlier U.S. Supreme Court holdings of *Gore* and *T.X.O.*,

supra.

Numerous Courts Have Upheld Punitive Damage Awards After The *Campbell* Ruling Which Exceed Single Digit Ratios

A comprehensive review and analysis of state and federal court rulings at the trial and appellate levels have tested for the constitutionality of punitive damage awards pursuant to the *Campbell* ruling and have affirmed punitive damage awards which have far exceeded single digit ratios. A review of these opinions is most instructive and further debunks the myth that, in order to pass constitutional muster and comply with the requisites of substantive due process, *Campbell* mandates single digit ratios in punitive damage actions.

1. Southern Union Co. v. Southwest Gas Corp. (D. Ariz. 2003) 281 F. Supp.2d 1090.

The court upheld a \$60 million punitive damage award against the State Corporation Commissioner in which it was alleged the commissioner interfered with contractual and business opportunities and breached the public trust. The court affirmed the \$60 million punitive damage award, which was a 150 to 1 ratio to the \$390,000 compensatory damages award. The district court, in its consideration of the *Campbell* holding, referred to the portion of the Supreme Court ruling which stated “the Supreme Court ‘declined again to impose a bright line ratio [between compensatory and punitive damages] which a punitive damages award cannot exceed.’”

Southern Union, supra, at 1099, *citing Campbell, supra*, at 1524.

2. The Willow Inn, Inc. v. Public Service Mutual Ins. Co., (E.D. Pa.) 2003 WL

21321370. In this insurance bad faith action, the U.S. District Court in Pennsylvania, in a bench trial, awarded \$2,000 in compensatory damages and \$150,000 in punitive damages. This 75 to 1 ratio was held by the court not to violate the *Campbell* ruling because of the financial

vulnerability of the insured and the potential harm that might have been incurred by the insured if the claim had not been paid by the insurer.

3. *Jones v. Rent-A-Center, Inc.* (D. Kan. 2003) 281 F. Supp.2d 1277. The court affirmed a 29 to 1 ratio. The compensatory damage award was \$10,000 and the punitive damage award was \$290,000.

4. *Mathias v. Accor Economy Lodging Inc. and Motel 6 Operating L.P.* (7th Cir. (Ill.) 2003) 347 F.3d 672. In this 7th Circuit Court of Appeals opinion by Justice Posner, the court upheld a 37.5 to 1 ratio in an action brought by hotel guests who were bitten by bed bugs and in which the evidence established the hotel failed to warn guests or to take effective measures to eliminate the bed bugs. Here, the compensatory damages were \$5,000 and the punitive award was \$186,000.

5. *Werremeyer v. K.C. Auto Salvage Co., Inc.*, (Mo. App. W.D.) 2003 WL 21487311 (not yet released for publication). In this fraudulent misrepresentation case, the jury awarded \$9,000 in compensatory damages and \$200,000 in punitive damages against the first defendant, and \$20,000 in punitive damages against the second defendant. The court then remitted the first defendant's punitive damages to \$125,000. The 14 to 1 ratio was upheld. Within the confines of the *Campbell* holding, the court concluded that exceeding a single digit ratio would be appropriate in this action because the deceit would have gone undetected, therefore justifying a ratio in excess of a single digit ratio.

6. *Williams v. Kaufman County* (5th Cir. (Tex.) 2003) 343 F.3d 689. In this civil rights action the Fifth Circuit Court of Appeals affirmed a ratio of 150 to 1. The compensatory damages in this action were \$100 and the punitive damages \$15,000.

7. *Lincoln v. Case* (5th Cir. (La.) 2003) 340 F.3d 283. In this landlord versus tenant

discrimination suit brought under the Fair Housing Act, the Fifth Circuit Court of Appeals upheld a 100 to 1 ratio in an action where the compensatory damages were \$500 and the punitive damage award was \$55,000.

The above referenced opinions clearly act to debunk the myth of **mandated** single digit ratios.

Conclusion

The California appellate courts have **chosen** to extract a single digit ratio rule and mandate from the *Campbell* holding. However, it is significant to note that based on the explicit language of *Campbell* and the holdings of state and federal appellate courts in other jurisdictions, California appellate courts have **chosen** to impose single digit ratios but are certainly not **required** to impose these rigid limitations on punitive damage awards.

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