

Third Circuit Weighs In on Limits of Punitive Damages Awards

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In a bad faith claim arising from a medical malpractice action, the U.S. Court of Appeals for the Third Circuit imposed a 1:1 ratio between compensatory and punitive damages in its ruling issued on December 24, 2008. *Jurinko v. The Medical Protective Co.*, Nos. 06-3519 & 06-3666, 2008 U.S. App. LEXIS 26263 (December 24, 2008). The bad faith claim against The Medical Protective Company ("Medical Protective") was based upon its conduct in an underlying medical malpractice action venued in state court in Pennsylvania brought by plaintiffs Stephen and Cynthia Jurinko ("the Jurinkos") against Stephen Jurinko's treating physician Dr. Paul Marcincin, the pathologist who read Mr. Jurinko's pathology slides and the company who employed the pathologist for failure to diagnose cancer. The Philadelphia Court of Common Pleas jury rendered a \$2.5 million verdict against Medical Protective's insured, which was \$1.3 million more than defendant Dr. Marcincin's coverage. Dr. Marcincin settled with the Jurinkos for his policy limits of \$1.2 million and an assignment of his insurance bad faith claim against Medical Protective. Dr. Marcincin's policy limit consisted of a \$200,000 primary policy and \$1 million from a catastrophic loss fund, which was an excess insurer.

Prior to the verdict, Medical Protective's claims adjuster did not offer more than \$50,000 to settle the medical malpractice claim, although he admitted that an adverse verdict range of \$750,000 to \$1 million was likely. Initially, Medical Protective appointed one attorney to represent both Dr. Marcincin and the pathologist, even though doing so prevented Dr. Marcincin from filing a cross-claim against the pathologist, thus denying him of a defense. Eventually, the catastrophic loss fund appointed a second attorney to assume the pathologist's defense, yet Dr. Marcincin continued to be represented by the attorney who had previously represented both physicians.

During the trial of the underlying case, the Jurinkos lowered their settlement demand to \$1.1 million, which was below the value placed by two trial court judges and within Dr. Marcincin's policy limits. Still, Medical Protective refused to increase its offer above \$50,000 with the hopes that the catastrophic loss fund would make a settlement offer on Dr. Marcincin's behalf; however, as an excess insurer, the catastrophic loss fund's policy was not available until Dr. Marcincin's \$200,000 primary policy was exhausted.

The plaintiffs filed a bad faith claim in the U.S. District Court for the Eastern District of Pennsylvania, contending that Medical Protective acted in bad faith by failing to settle the underlying medical malpractice case within the insured's policy limits, as well as by failing to appoint separate defense counsel to two defendant physicians in the underlying action. Medical Protective's claims adjuster acknowledged that he acted unreasonably and irresponsibly in the settlement negotiations and that his failure to appoint separate counsel for Dr. Marcincin from the outset deprived Dr. Marcincin of a defense. At trial, the jury awarded the plaintiffs compensatory damages in the amount of \$1,658,345 and punitive damages of \$6,250,000, or almost four times the compensatory damages award.

On appeal, Medical Protective challenged the sufficiency of the evidence to support a finding of bad faith for failure to settle, the trial court's instruction to the jury on punitive damages and the amount of the punitive damage award. The Third Circuit, however, agreed with the District Court that Medical Protective had acted in bad faith insofar as it failed to attempt to settle the underlying case within the insured's policy limits. Further, the Third Circuit concluded that sufficient evidence was presented for the state jury to find Medical Protective's conduct to be outrageous, to allow the jury to award punitive damages.

In response to Medical Protective's claim that the state jury's award of punitive damages was unconstitutionally excessive, the Third Circuit reviewed the constitutionality of punitive damages *de novo*. The Third Circuit's analysis of whether the punitive damages award was unconstitutional focused on three "guideposts," originally outlined in the U.S. Supreme Court's opinion of *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). These guideposts are: "(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 [factfinder] and the civil penalties authorized or imposed in comparable cases."

Relying upon the U.S. Supreme Court's decision in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996), the Third Circuit began its analysis of whether Medical Protective's misconduct was reprehensible. Specifically, the *Jurinko* Court examined the five factors enunciated in the *Gore* opinion, including: (1) whether "the harm caused was physical as opposed to economic"; (2) whether "the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others"; (3) whether "the target of the conduct had financial vulnerability"; (4) whether "the conduct involved repeated actions or was an isolated incident"; and (5) whether "the harm was the result of intentional malice, trickery, or deceit, or mere accident." Of the five reprehensibility factors, the Third Circuit found that there was evidence of only two factors present in Medical Protective's misconduct. In particular, the Third Circuit determined that Medical Protective's insured, Dr. Marcincin, was financially vulnerable insofar as he would have to deplete his life savings to pay the excess judgment. The court also noted the intentional conduct of Medical Protective fit the second of the reprehensibility factors.

The Third Circuit next evaluated the second "guidepost," which is the ratio between harm and punitive damages awarded. The *Jurinko* Court determined that the Supreme Court cases of *Campbell* and *Gore* were instructive in its analysis of whether the compensatory-punitive damages ratio of 3.13:1 violated Medical Protective's due process rights.

The *Jurinko* decision noted that "high ratios do not violate due process if 'a particularly egregious act has resulted in only a small amount of economic damages,' or if 'the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.'" Quoting *Gore*, 517 U.S. at 582. Since the Third Circuit decided that Medical Protective's conduct was not "particularly" egregious, and the compensatory damages were substantial and easily measured, the court concluded that only a lesser punitive damages award would satisfy due process.

Turning its attention to the third "guidepost," the disparity between the punitive damages awarded and the potential civil penalties, the Third Circuit concluded that the large punitive damages award appeared "excessive in light of the comparatively modest monetary sanctions imposed for such conduct." Therefore, the third "guidepost" also suggested that the punitive damages award was excessive.

Once the punitive damage award was deemed to be excessive, the court set out to determine the proper ratio between compensatory and punitive damages. The Third Circuit's consideration of all three "guideposts," in conjunction with deference to the *Campbell* decision that instructed "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee[.]" resulted in the determination that the plaintiffs' punitive damages award should be reduced to reflect a 1:1 ratio. Consequently, the Third Circuit held that the punitive damages award was unconstitutionally excessive and reduced the punitive damage award to \$1,996,950.56.

Although the *Jurinko* decision is not precedential, it serves as an indication that large punitive damages awards may be limited to a 1:1 ratio, particularly where the compensatory award is high and the civil penalties for such conduct are modest. Future punitive damages awards in excess of a 1:1 ratio with compensatory damages are likely to serve as the basis for appeals. Furthermore, the *Jurinko* opinion suggests that the Supreme Court's decision in *Exxon Shipping Co. v. Baker* potentially has application outside the scope of maritime law cases. Such a trend to reduce punitive damages awards, however, will likely be governed by the amount of compensatory damages awarded as well as the egregiousness of the defendants' behavior. Specifically, the *Jurinko* opinion seems to only sanction a 1:1 ratio if a plaintiff is awarded substantial compensatory damages, and its "not precedential" moniker suggests that almost all appeals of punitive damages awards may have to undergo a fact-sensitive analysis prior to imposition of a 1:1 ratio.

For Further Information

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