

NEW MEXICO INJURY ATTORNEY BLOG

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Punitive Damages in New Mexico: What is Reasonable?

The \$100 million award of punitive damages against British Petroleum for workers injured by a toxic chemical release raise some interesting issues for New Mexico law. The federal court case in Texas offers some precedent but punitive damages awards are governed by state law. It seems unlikely that the award against BP would stand due to the 333 to 1 ration of punitive damages to compensatory damages.

New Mexico's law is fairly well established. A punitive damages award in New Mexico will be overturned only if it shocks the conscience. Texas law is probably similar explaining the language used by the BP spokesman. The seminal case in New Mexico is *Jolley v. Energen* (NM App. 2008).

The Court in *Jolley* relied heavily on the 2003 U.S. Supreme Court case of *State Farm Mut. Auto. Ins. Co. v. Campbell*. The Supreme Court in *Campbell* stated that the " degree of reprehensibility of a defendant's conduct was the most important consideration in the reasonableness of a punitive damages award. Drawing further on *Campbell*, the Court stated that " we compare the damages to the enormity of Defendant's wrong apart from the actual injury sustained." The reprehensibility of the defendant's conduct is measured by five categories of conduct:

- 1) the harm caused was physical as opposed to economic;
- 2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;
- 3) the target of the conduct had financial vulnerability;
- 4) the conduct involved repeated actions or was an isolated incident; and
- 5) the harm was the result of intentional malice, trickery, or deceit, as opposed to mere accident.

The Court in *Jolley* recognized that punitive damages are awarded for the purposes of punishment and deterrence of others from similar behavior. However, punitive damages must be based on reason and justice. The Supreme Court in *Campbell* refused to impose a bright-line ratio but stated that single digit multipliers are more likely to meet the standards of due process.

The Court in *Jolley* upheld the punitive damages award which was less than 7 to 1 in the case. The \$15 million represented one of the largest punitive damages awards in the state's history. In so ruling, the Court stated that the punitive damages award must not be so unrelated to the injuries as to plainly suggest passion and prejudice over reason and justice in the jury's verdict.

The BP verdict representing 333 to 1 would appear to suggest that passion and prejudice dictated the jury's verdict and would likely not stand in New Mexico. In fact, the history of BP's behavior which likely formed the basis for the enormous award was also probably the basis for the passion and prejudice of the jury. The case is most interesting in light of BP's history at the subject plant. After all, punitive damages are meant to deter bad behavior and quite clearly BP has not yet received that message.

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Whether or not the verdict is overturned, the verdict certainly sends a message to corporate actors to behave reasonably in the future in settlement discussions. BP's stubborn \$500/worker offer of settlement resulted in the litigation. Unfortunately, such behavior is often present when dealing with corporations and insurance companies. Verdicts such as the one against BP should cause cause corporations to approach the process with greater fairness and reason. I say should because the reality is that nothing is likely to change.

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