

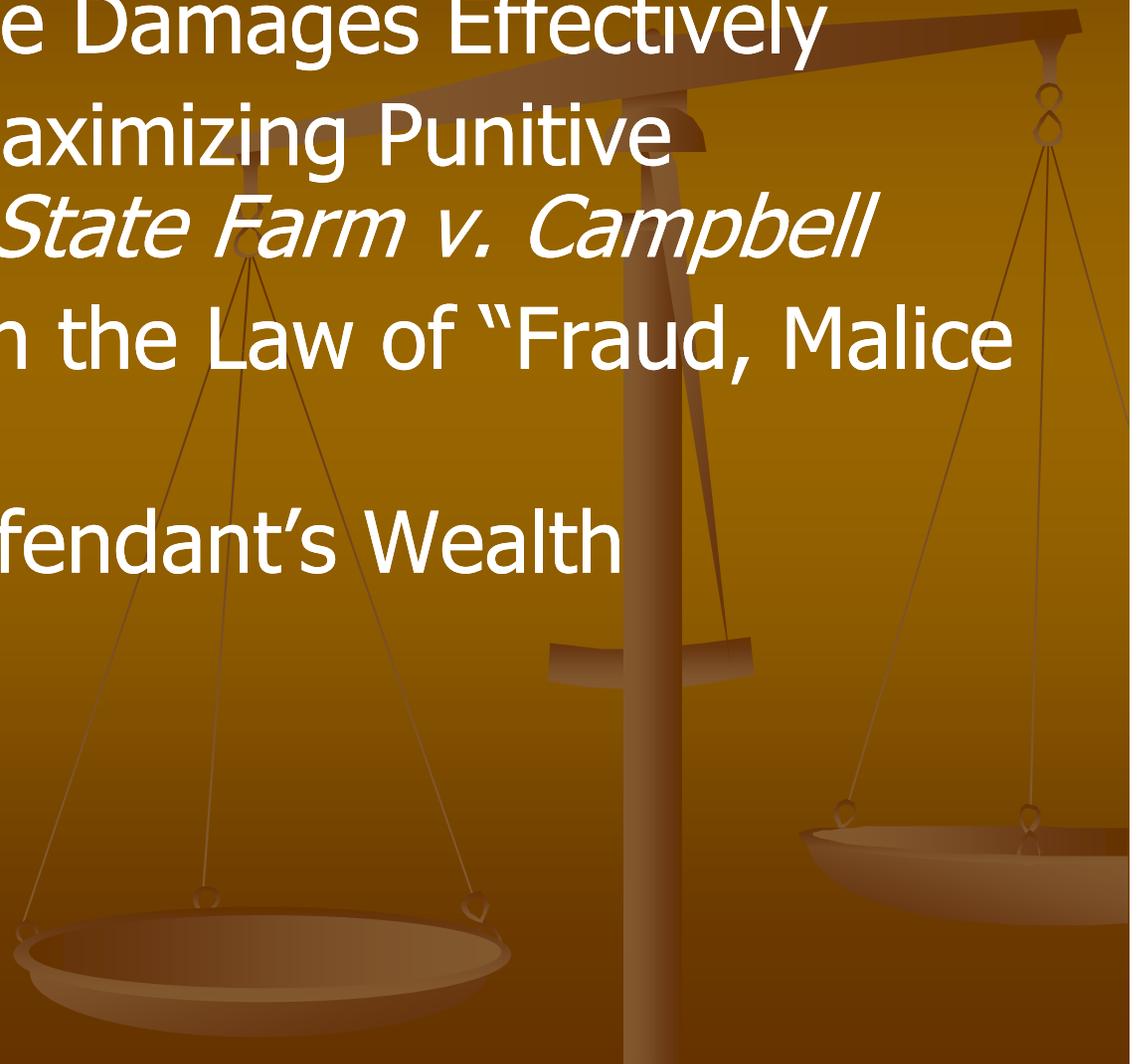
CONSUMER ATTORNEYS OF LOS ANGELES

INSURANCE BAD FAITH SEMINAR: PUNITIVE DAMAGES

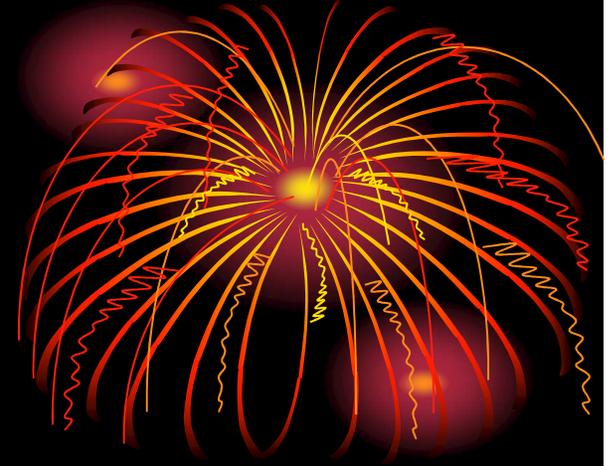
Bill Daniels
Bill Daniels Law Offices
Los Angeles

Punitive Damages

- Pleading Punitive Damages Effectively
- Strategies for Maximizing Punitive Damages After *State Farm v. Campbell*
- Developments in the Law of “Fraud, Malice or Oppression”
- Discovery of Defendant’s Wealth
- Jury Strategies



Pleading Punitive Damages



- **Specific Pleading**
- **Clear and convincing evidence**
- **Malice, fraud or oppression**
- **Conscious disregard**
- **“Despicable” conduct**

Maximizing Punitives Following *Campbell*

- *State Farm v. Campbell* imposes due process limits on punitive damages.
- California Courts of Appeal are divided on the limits
- California Supreme Court will review the issue
- Rule of Thumb is – demand conservatively, ask intelligently

California Law Post- *Campbell*

- *Simon v. San Paolo U.S. Holding Co., Inc.* (2003) 113 C.A.4th 1137. Affirmed \$1.7 million award (either 4x effective loss or 340x compensatory award)
- *Johnson v. Ford Motor Co.*, 2003 WL 22794432. Reduced \$10 million award to \$53,435 (3x compensatory award)
- Review granted, March 24, 2004

Malice, Fraud and Oppression

- Civil Code s 3294(c)(1): “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
- (c)(2): “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.
- (c)(3): “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant or thereby depriving a person of property or legal rights or otherwise causing injury.

Despicable Conduct

- “Despicable conduct” supporting an award of punitive damages is conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. *George F. Hillenbrand, Inc. v. Insurance Co. of N. Am.* (2002) 104 C.A.4th 784.
- Requirement of “despicable” conduct represents substantive limitation on punitive damage awards, since the adjective “despicable” is a powerful term that refers to circumstances that are base, vile or contemptible. *Shade Foods, Inc. v. Innovative Products Sales & Marketing* (2000) 78 C.A.4th 847.

Net Wealth Discovery

- ❑ Still viable evidence under *Campbell*.
 - ❑ Under California law, if there is no evidence of defendant's financial condition in the record, award of punitive damages is excessive as a matter of law and must be reversed; and burden of producing that evidence is on plaintiff. *Chavez v. Keat* (1995) 34 C.A.4th 1406.
 - ❑ Economist
 - ❑ Department of Insurance Annual Filing (Certified Public Record)
 - ❑ Stipulation
-

Jury Strategies

- Bring out the “*mean.*”
- Remember who has the power.
- What was “*the promise of the policy*”?
- Pattern of practice
- Don't overreach!





William A. Daniels is a trial lawyer and shareholder with the law firm of BILL DANIELS | LAW OFFICES, APC in Encino California.

A graduate of Loyola Law School of Los Angeles, Bill Daniels is a former member of the Consumer Attorney Association of Los Angeles Board of Governors and a founding member of the Civil Justice Program and the Advanced Trial Studies program at Loyola Law School in Los Angeles. He regularly lectures before various professional groups on class action, personal injury, insurance bad faith and legal ethics.

Bill Daniels | Law Offices, APC
16133 Ventura Boulevard, Penthouse Suite A
Encino, CA 91436
(800) 573-0490
William.Daniels@BillDanielsLaw.com

**Additional information can be found on
<http://BillDanielsLaw.com>**

Five Fatal Bad Faith Mistakes and How To Avoid Them

The law right now is probably as favorable for carriers as it's been
in several generations.

Discovery and Depositions In The Bad Faith Case

Bad faith basics.

Trying The Insurance Bad Faith Case

Some trial tips for insurance bad faith practitioners.