

Thomas Nickerson v. Stonebridge Life Ins. Co.

Year: 2014

Court: California Supreme Court

Case Number: S213873

Punitive damages awards are subject to heightened Due Process scrutiny after the U.S. Supreme Court's decision in *State Farm v. Campbell*. While the *Campbell* ruling did not establish a bright-line rule, many state and federal courts, including California, have announced that no more than a 9:1 ratio of punitive to compensatory damages is allowed under the Constitution. The issue presented in this case is whether Brandt fees (post-trial attorney's fees awarded by a judge in insurance bad faith cases) are considered compensatory damages for purposes of the ratio. UP argued in its brief that Brandt fees are compensatory in nature because they represent a measure of damages incurred by the policyholder in order to recoup policy benefits. UP reminded the Court that punitive damages serve the purpose of deterring corporate misconduct and by not including Brandt fees in the ratio because they are awarded by the judge instead of a jury, such awards will be arbitrarily reduced. Awarding Brandt fees post-trial serves judicial economy and represents merely a procedural rather than substantive distinction. UPdate 6/10/16: Today the California Supreme Court reversed the appellate court and held that attorneys fees awarded in bad faith cases (Brandt fees) are properly considered compensatory damages for purposes of determining an appropriate punitive damages ratio. Specifically, the court held: "We conclude that the Court of Appeal erred. In determining whether a punitive damages award is unconstitutionally excessive, Brandt fees may be included in the calculation of the ratio of punitive to compensatory damages, regardless of whether the fees are awarded by the trier of fact as part of its verdict or are determined by the trial court after the verdict has been rendered. We therefore reverse...Because the *Gore* guideposts are designed to govern postverdict judicial review of the amount of a jury's award, not the adequacy of the jury's deliberative process, there is no apparent reason why a court applying the second guidepost may not consider a postverdict compensatory damages award in its constitutional calculus...to exclude the fees from consideration would mean overlooking a substantial and mutually acknowledged component of the insured's harm. The effect would be to skew the proper calculation of the punitive compensatory ratio, and thus to impair reviewing courts' full consideration of whether, and to what

extent, the punitive damages award exceeds constitutional bounds.”

UP's brief was authored pro bono by Sharon Arkin, Esq. of the Arkin Law Firm and UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.