EXHIBIT 4

CLAIMS ADMINISTRATION REFERENCE GUIDE

American Insurance Association, 85 John Street, New York, New York 10038

PUNITIVE DAMAGES

1. PUNITIVE DAMAGES - GENERAL

A. General Nature of Review

The subject of punitive damages must be reviewed generally rather than as a set of rules to be followed in any specific jurisdiction. The broad overview here is intended to provide, indeed, only a framework for the analysis of any particular set of circumstances that might conceivably result in a punitive damages award.

First, of course, it must be recognized that liability, i.e., responsibility as alleged and coverage, protecting the insured against his or her act of omission or commission, are controlled by state decisions and in accordance with the law as applied by the forum state, in accordance with its conflicts of law rules. Intentional tort is, in most cases, not covered by a liability policy, although the insured may be liable for the damage done, to the extent of being punished by being assessed a sum of money beyond compensation for the injury inflicted. Further, as noted in the decisions referred to elsewhere, coverage for punitive damages may be held invalid, as being opposed to the stated public policy of the jurisdiction, liability nevertheless existing as to the insured/wrongdoer.

The adjuster or claim manager, then, must review the coverage involved and the jurisdiction's decisions applying to either the recognition or denial of coverage, as against the particular circumstances of the claim involved. Only then can a settlement strategy be recommended and then only as viewed in relation to the demand for compensatory damages. A thorough analysis, however, of the material that follows should provide a reasonable guideline.

B. Nature of Punitive Damages - Deterrent or Compensatory?

Punitive damages has been the subject of much discussion and many learned treatises. From the earliest days, it has been a controversial subject, with many commentators looking upon the recovery of "smart money" with distaste. The availability of insurance, however, has eroded the somewhat disreputable character of punitive damages. It has, as would be expected, grown in respectability.

A basic question concerns the nature of punitive damages - are they compensatory or are they "punitory", i.e., a punishment inflicted on the defendant in order to deter others from similar behavior? The view that is taken, of course, can assume crucial importance in coverage cases.

It is well recognized that a state has the power and authority to inflict punishment upon those persons who have committed actions inherently evil and injurious to the public. "Punitive" is defined as "relating to punishment; having the character of punishment or penalty; inflicting punishment or a penalty." "Punitive" is also generally synonymous with "exemplary" in terms of damages for wrong(s) done to an individual - aggravated by violence, oppression, malice, fraud or wanton and wicked conduct; however, without the concept of punishment to the wrongdoer. Nevertheless, the words used to describe the latter apply also the former, creating an understandable lack of clarity in the resulting definition of punitive damages.

The concept of punishment for acts that are inherently evil or contain elements of violence, oppression, malice, fraud or wanton and wicked conduct is not new, of course. Whether punitive or exemplary, by definition, the question obviously arises from time to time whether an award of punitive damages serves the purpose of deterring a wrongdoer from further acts and others from aggravated wrongs to an individual, although conceived as punishment for actions injurious to the public. The application of the philosophy of "an eye for an eye" often seems to shift, if the injury is seen to stem from the existence of a corporation, for instance, particularly a well-insured corporation. This is not a cynical observation, but seems to represent a rationale at times in some courts, although not all.

The view that punitive damages are compensatory has been stated in a number of jurisdictions, but generally in connection with interpretation of a statute or legislative "intent". Such a decision was rendered in the Connecticut case of Tedesco vs. Maryland Casualty Co., wherein punitive damages were held to be compensatory in nature and to be distinguished from penalties.

The contrary view was stated by Judge Wisdom of the Fifth Circuit Court in the case of Northwestern National Casualty Co. vs. McNulty. He ruled that the Florida law applying was that punitive damages were "not compensatory but were for the purpose of punishing the defendant for his actions and deterring others from such behavior".

In view of the current emphasis (over-emphasis) on the rights of the consumer, it is not surprising that there has been an extension of the general philosophy to provide for the punishment of wrongdoers beyond compensation for the injury sustained and, particularly, to punish those who are highly visible, capable of a substantial payment or who merely are "big". Large judgments for punitive damages today are fairly commonplace. In those jurisdictions where punitive damages are considered as compensatory damages or where an employer or an individual is liable vicariously for the wrongful acts of another, the impact of these judgments on insurance companies is of considerable importance. This is equally true where the plaintiff is permitted to place in evidence the dollar worth of a defendant; increased compensatory damages is frequently the result, even if punitive damages are not granted.

It is apparent that the human judgments made in interpreting the term "punitive" and the intentions behind awarding or not awarding such damages vary widely. Some judgments obviously are based on the belief that the deterrent effect intended is not apparent in fact. These decisions seem to infer that punitive damages should be considered as compensatory in nature and, therefore, covered under a liability policy, disregarding otherwise accepted public policy opposing punitive damages. Other jurisdictions follow the concept of the deterrent purpose, concluding that punitive damages are not awarded because of an injury sustained and, therefore, are not covered by a liability policy.

C. Recovery of Punitive Damages Barred

Reflecting the view that punitive damages are disreputable, four states - Louisiana, Massachusetts, Nebraska and Washington, prohibit such damages completely. In these states, obviously, no coverage question exists. It is in the remaining states, with conflicting decisions, where difficulty is encountered.

D. Wrongful Death - Punitive Damages Barred

Actions for wrongful death, generally, do not permit punitive damages awards on the theory that awards based on wrongful death should be limited to "fair and just" compensation for pecuniary loss arising from the death complained of. This may appear to be contrary to the deterrent principle, but has the merit of an eminently more civilized approach to the economic principle of restitution or reimbursement. Such statutes usually are worded so as to be strictly compensatory in nature.

Such may not be the case under a survival cause of action, however. In the case of Mattyasovszky vs. West Towns Bus Co., 313 N.E. 2d 496, the court said that punitive damages could not be awarded under the Wrongful Death Statute but noted that, where Survival Statutes are interpreted as remedial in nature and liberally construed, punitive damages might be allowed where the decedent died due to the willful and wanton conduct of another. Reference was made by the court to Reynolds vs. Willis, 58 Del. 368, Hennigan vs. Atlantic Refining Co., D.C., 382 F. Supp. 667 and Murphy vs. Martin Oil Co., 308 N.E. 2d 587, where punitive awards were "logically" allowed under the statutory (survival) wording.

II. Coverage for Punitive Damages

A. General Considerations

Generally, there are four lines of decisions dealing with the issue of coverage for punitive damages:

1. Punitive damages are not covered under an insurance policy since such coverage would violate public policy; this view is dependent on the punishment and deterrent theory of punitive damages.

2. Public policy does not bar coverage for punitive damages; in fact, there are public considerations to the contrary, i.e., that an injured party should be compensated and that an insurer should pay an obligation for which it received a premium.

3. That the insuring agreement of a liability policy is sufficiently broad to cover punitive damages; this view is dependent on punitive damages being considered compensatory in nature.

4. That coverage exists where liability is vicariously imposed, even though public policy would prohibit coverage for punitive damages where liability was direct.

Many courts today are naturally conscious of the wording of insurance liability coverages. In those states where punitive damages are not specifically excluded as being opposed to public policy, there is a tendency to move toward the reasoning that, if the insurer did not specifically exclude punitive damages in the policy, it was therefore responsible for payment for any punitive damages assessed against the insured. In one recent case, it was even held that an intentional tort, normally not covered, was an "accident" as to the plaintiff; that the responsibility of the insurer for "all sums", as set out in the insuring agreement, included punitive damages which the insured became liable to pay.

The general position taken by many courts is that an employer or a second party, having a position of contractual or assumed responsibility for the acts of another, has a right to protect himself or herself against an action based on his or her vicarious liability resulting from the employee's or associate's malicious actions. In fact, in most situations of this kind, a liability policy will be presumed to cover this vicarious liability, unless a specific exclusion to the contrary is spelled out in the policy. However, note that in the Colorado case of Universal Indiana Insurance Co. vs. Tenery (Infra) and the Pennsylvania case of Esmond vs. Liscio (Infra) such damages were excluded from the judgment on the theories that collection of punitive damages "from a non-participating party" (to the injury) was opposed to public policy, "(it was) against public policy to insure an intentional tort" and "on the grounds of public policy which prohibited the shifting of the burden of punitive damages to the insurer." (Emphasis added).

B. Punitive Damages and Intentional Torts

Closely allied to the question of punitive damages is the question of whether the defendant's acts were intentional or not. If intentional, the coverage question disappears, since there would be no coverage at all. If not intentional, and of such a nature as to justify the imposition of punitive damages, then the question would have to be resolved as to whether coverage for such damages exists.

Some interesting decisions on coverage, widely at variance, have considered cases of unprovoked assault, for instance, as opposed to wanton or malicious ness in cases of negligence. Normally, we think of a willful act as being an intentional act. However, it has been held that willful or malicious injury does not equate, necessarily, to intentional tort. Similarly, negligent conduct may be so wanton as to support punitive damages and still

fall short of deliberateness or intention. Following this line of thought, the careful analysis of the facts of a case might possibly lead in any one of several directions, i.e., 1) to coverage under a policy, where public policy was not invoked, 2) to policy coverage under vicarious liability as not contravening public policy and, finally, 3) to a determination voiding coverage because an intentional tort would be against public policy. It is equally obvious that such an analysis can also be used to achieve "justice as seen by the judge or jury in any particular situation.

C. Review of Decisional Law, By State

1. Punitive Damages Covered

Alabama:

American Fidelity and Casualty Co. vs. Werfel, 162 So. 103, 164 So. 383, 1935. These two cases are frequently cited in support of recovery of punitive damages from an insurer. However, Alabama law does not distinguish between punitive and compensatory damages.

Employers Ins. Co. of Alabama vs. Brock, 172 So. 671 1937. Citing the Werfel case, with approval.

Capitol Motor Lines et al vs. Loring et al, 189 So. 897, 1939. This is a wrongful death case as were the Werfel cases, supra, and does not deal directly with coverage for punitive damages.

Arizona:

Price vs. Hartford Accident Indemnity Co., 502 P. 2d 522. Refutes contention that punitive damages act as a deterrent and invokes an Arizona public policy requiring an insurer to honor its obligations, after taking a premium for liability coverage.

Arkansas:

Southern Farm Bureau Casualty Co. vs. Daniel, 440 S.W. 2d 582. This involves vicarious liability of an employer and relies on the doctrine of respondeat superior.

California:

U. S. Fidelity and Guaranty Co. vs. Janich, 3 FRD 16 (CAL) 1943. Policy held sufficiently broad to cover exemplary damages; court did not rule on the question of intention in the assault by a partner of the insured.

Dart Industries, Inc. vs. Liberty Mutual Insurance Co., 484 F2 1295. This involves a libel action. The court held that punitive damages were not excluded on the grounds alleged by the insurer, that the act of libel was "willful" (and presumably, therefore, an intentional tort).

Florida:

Country Club of Miami Corp. vs. McDaniel, 310 So. 2d 436. Complaint alleged breach of contract and willful disregard of contractual obligations. Court held that "where acts constituting breach of contract also amount to a cause of action in tort, there may be a recovery of exemplary damages -- on -- proof of intentional wrong -- constituting an independent tort."

Idaho:

Abbie Uriguen Olds, Buick, Inc. vs. U. S. Fire Insurance Co., 55 P. 2d 783. In this case of vicarious liability, the Supreme Court did not rule as an exception to the public policy rule, but held coverage for punitive damages existed because the liability policy did not exclude punitive damages.

Illinois:

Scott vs. Instant Parking, Inc., 105 Ill. Ap. 2d. 133, 245 N.E. 2d 124, 1969 Intentional tort held an "accident" as to plaintiff; insurer responsible for "all sums" which included punitive damages.

Kentucky:

Maryland Casualty Co. vs. Baker, 304 Ky. 296, 200 S.W. 2d 757, 1947. Assault by a taxi driver (employee) held by statute to be covered by the taxicab operator's policy, as to a punitive damages award.

The Continental Ins. Companies vs. Hancock, 507 S.W. 2d 146. Appellate court held it was not "unreasonable to allow (a) master to insure against his liability for punitive damages" and not against public policy. (Vicario liability).

Maine:

Concord General and Mutual Ins. Co. vs. Hills, 345 Fed. Supp. 1090, 1972. An automobile liability case, where the court held the insurer responsible for both compensatory and punitive damages.

New York:

Roy vs. Hartogs, New York Law Journal, 7-9-75. New York County Civil Court upheld an award of $100,000 in punitive damages against a psychiatrist for engaging in intercourse and other sexual acts with a female patient, as part of his treatment of the patient.

Rhode Island:

Morrell vs. Lalonde, 120 A 435, 1923. A malpractice case where insurer was held liable for "loss from liability imposed by law" and included punitive damages.

South Carolina:

Glens Falls Ind. Co. vs. Atlantic Building Corp., 199 F. 2d 60, 1962. Assault by president of a corporation. Coverage held to exist for the corporation for judgment which included punitive damages (Vicarious liability).

Pennsylvania Threshermen and Farmers Mutual Casualty Ins. Co. vs. Thornton, 244 F. 2d 823, 1957. Insured held to provide coverage for punitive damages, for the reason that negligent conduct, characterized as willful and wanton, may fall short of an assault and battery which would not be covered.

Caraway vs. Johnson, 139 S.E. 2d 908, 1965. An automobile liability case holding that the insuring agreement, to pay "all sums", includes coverage for punitive damages.

State Farm Mutual Automobile Ins. Co. vs. Hamilton, 326 Fed. Supp. 931, 1971. Citing Caraway vs. Johnson with approval.

Tennessee:

Lazenby vs. Universal Underwriters Ins. Co., 383 S.W. 1, 1964. An automobile liability case, the court doubting that denying of coverage for punitive damages would deter future wrongful conduct; however, conceding that intentional torts would not be covered.

Texas:

Dairyland County Mutual Ins. Co. vs. Wallgren, 477 S.W. 2d 341. Under the Texas Motor Vehicle Safety Responsibility Act, the court held that coverage for punitive damages was not contrary to public policy.

Virginia:

Lipscombe vs. Security Ins. Co., 189 S.E. 2d 320, 1972. An automobile liability case (uninsured motorist provision), holding the insurer liable for punitive damages as a part of "all sums" wording of the Virginia uninsure motorist statute.

2. Punitive Damages Not Covered

Colorado:

Universal Indiana Ins. Co. vs. Tenery, 39 P. 2d 776, 1934. This case is frequently cited in support of the position taken by Colorado courts. An automobile liability case, holding that the purpose of punitive damages was to punish - and not to compensate the injured party. Since the insurance company did not participate in the wrong, the injured party could not recover punitive damages from it, "for a wrong against the public".

Gleason vs. Fryer, 491 P. 2d 85, 1971. The Tenery case rule upheld.

Brower vs. Western Casualty and Surety Co., 484 P. 1252, 1971. Citing the Tenery case, with approval. The court stated that punitive damages were not (are not) awarded "because of bodily injury" and, therefore, were not covered under a liability policy.

Connecitcut:

Tedesco vs. Maryland Casualty Co., 127 Conn. 533, 18 A 2d 357, 1941. Statute provides for double damages; the court distinquished the double damages from punitive damages, the former being held as a penalty and the latter as compensatory in nature. The court, in a dictum, indicated that punitive damages, as distinguished from penalties, were recoverable.

American Ins. Co. vs. Saulnier, 242 Fed. Supp. 257, 1965. An action for negligence, the court holding that Connecticut law prohibited the insuring of a penalty but allowed a recovery under a liability policy when the principal purpose was compensation for an injury.

Note: The wording in the foregoing cases is unusual, when compared with the law in other states but seems to clearly deny the liability of an insure for a penalty. Difficulty is encountered with the definition of "punitive" as being compensatory, not with the intent of the court rulings. The reader may decide that Connecticut holds the position of "No, but yes".

Florida:

Northwestern National Casualty Co. vs. McNulty, 307 F. 2d 432, 1962. This is a leading case, frequently cited against coverage for punitive damages. An automobile liability case, the court held that punitive damages were "punitory and a deterrent" and not to be considered compensatory in nature. As such, punitive damages could not be covered under a liability policy, being contrary to public policy. However, where vicarious liability was involved, the court recognized an exception to the public policy prohibition

Nicholson vs. American Fire and Casualty Ins. Co., 117 So. 2d 52, 1965. An automobile liability case, the court cited the McNulty decision with approval.

Sterling Ins. Co. vs. Hughes, 187 So. 2d 898, 1966. An assault case, the insurer was held liable for punitive damages where the insured employer was vicariously liable.

Travelers Ins. Co. vs. Wilson, 261 So. 2d 545, 1972. An automobile liabili case, the court held that the insurer was liable for punitive damages for the reason that the insured automobile owner was vicariously liable for the acts of one driving his vehicle with permission.

Commercial Union Ins. Co. vs. Reichart, 404 F. 2d 868, 1968. An assault ca the insurer was held liable for punitive damages where the insured employer was vicariously liable.

Kansas:

American Surety Co. of New York vs. Gold, 375 F. 2d 523, 1967. Citing the McNulty case, the court held that public policy forbade contracts insuring against punitive damages.

Guardianship of Estate of Smith, 507 P. 2d 189. The Supreme Court held in this surety case that the statute covering conversions provided that exemplar or punitive damages, which public policy required, rest on the party committing the wrong (and may not be insured against).

Minnesota:

Casperson vs. Webber, 213 N.W. 2d 327. Insured pushed and injured hat check girl. Jury awarded punitive damages "as punishment to the defendant and as a deterrence to others - the company's policy afforded no coverage for punitive damages."

Missouri:

Ohio Casualty Ins. Co. vs. Welfare Finance Co., 75 F. 2d 58. An action for negligence, the court holding that the insurer's policy covered punitive damages because of a master-servant relationship. The insured's liability was held to be indirect or vicarious.

Crull vs. Glebb, 382 S.W. 2d 17, 1964. An assault case, the court holding that the insurer was not responsible for punitive damages awarded to the plaintiff in this direct liability case.

Colson vs. Llyod's of London, 425 S.W. 2d 42, 1968. This unusual case permitted the recovery of punitive damages where the policy covered an association of law enforcement officers. Held that public policy was not violated (as an exception).

New Jersey:

La Rocco vs. N. J. Manufacturers Independent Ins. Co., 82 N. J. Super, 323, 197 A. 2d 591, 1964. This case involved an intentional ramming of a vehicle an additional insured was driving the insured vehicle with permission. The court held that there was no coverage for punitive damages on the issue of public policy, distinguishing this case from vicarious liability cases.

New York:

Teska vs. Atlantic National Ins. Co., 300 NYS 2d 375, 1969. An additional insured was involved, the court holding that public policy forbids an insurer from insuring against punitive damages.

Padavan vs. Clemente, 350 N.Y.S. 2d 694. Citing the Teska (and Gold) cases, the court held that an insurer was not liable for punitive damages sought against its insured and (would not) "permit an insured to avoid the effect of the imposition of punitive damages by passing the burden of payment on to an insurance company."

Oregon:

Isenhart vs. General Casualty Co. of America, 377 P. 2d 25, 1962. An assault case, the court holding that punitive damages, as all damages, were not covered under a liability policy, as being against public policy.

Pennsylvania:

Esmond vs. Liscio, 209 Pa. Super. 200, 234 A. 2d 793, 1967. This is an automobile liability case involving, however, not only negligence of the driver, but also an intentional tort by the insured owner's son. The court held it would be against public policy to 1) insure an intentional tort and 2) insure against punitive damages, thus shifting the burden for punitive damages from the insured to the insurer.

III. Punitive Damages for Breach of Contract - Bad Faith - Failure to Settle

Not the least of insurers' concerns, in the punitive damage area, are interpretations by the courts, with seemingly little provocation, which hold an insurer liable for fraudulent or oppressive acts or breach of contract in dealing with an insured covered either by a liability contract or under a first party contract. In either case, the punitive damages awarded the insured are more apt than not to be influenced both as to liability and amount by the fact that the insurer is a large organization and completely responsible financially, the size of the award seemingly being influenced by the financial worth of the insurer. Such decisions are, of course, independent of the effect on insurers of Unfair Claim Practices Acts provisions.

The question of "bad faith" on the part of an insurer in 1) the processing of a first party claim or 2) in the investigation and settlement of a liability claim against its insured should revolve around the discerned actions and intent of the insurer. The case of Crisci vs. Security Ins. Company, (66 Cal. 2d 425), however, produced the argument that "when an insurer receives an offer to settle within the policy limits and rejects it, the insurer (shall) be liable - for the amount of any final judgment, whether or not within the policy limits". Obviously, the intent, here, (although not adopted) was to categorically convict an insurer on the whim of a jury, rather than to permit an insurer's evaluation of a case and regardless also of steps properly taken in the investigation and review of a case with the insured. The result would be a peculiar kind of justice, giving no weight to the actions of the insurer and seemingly directing an insured to seek reimbursement for any excess award over the policy limits, plus punitive damages for the automatic breach of contract.

In first party contract matters, the insurer must, of course, honor the terms of the policy (contract) in good faith. What constitutes "bad faith"? Here again, the question of a good faith dispute concerning the loss sustained by the insured may too often be held in favor of the insured. This may be for many reasons, including the courts' remembrance of the past history of the alleged conduct of some insurance companies. Protestations of current fair dealing probably will not be sufficient, alone, in an individual action for punitive damages. It is probable that the greater weight of evidence will have to indicate that an insurer actually did more than an average person could have expected, or run the risk of being charged with malice, fraud, heedless disregard of the consequences or oppressive conduct in its actions or lack of action.

In one recent case involving a Worker's Compensation claim, where mental distress resulted in nervous breakdowns, the insurer was held to have "breached a covenant of good faith and fair dealing implied in every insurance contract." Punitive damages clearly could have been awarded had the court found sufficient evidence of oppressive conduct by the insurer in not making proper medical payments. In this case, only compensatory damages were allowed although, clearly, there was a close question of fact concerning the insurer's handling of the claim. In fact, one judge suggested that the insured's petition should be permitted to be reworded so that punitive damages could be awarded. In another case involving coverage on fixtures and personalty, the insurers made no offer of settlement, although the insured items were virtually destroyed. In spite of the insurer's protests that a good faith dispute existed as to the amount of loss, the court allowed the jury to find that the insurers' conduct was grounds for awarding the insured punitive damages.

In the face of the many recent Unfair Claim Practices Acts and regulations promulgated throughout the country, it seems apparent that judges and juries alike will be influenced to look with favor on claims for punitive damages for breach of contract by insurers whether by commission or omission. Likewise, more and more insureds will seek redress for any possibility of wrong-doing by their carriers. Such is the nature of the times. Therefore, current trends in this area of the punitive damages field are important, needing careful analysis, both as to interpretation of "bad faith" and any consensus or emphasis within any particular jurisdiction.

The following cases, by state, are representative of recent decisions that have been held against or in support of punitive damages for breach of contract:

Arkansas:

Cassady vs. United Ins. Co. of America, 370 Fed. Supp. 388. Action on a disability policy. Court held "punitive damages may be awarded against one who commits a willful or malicious wrong, but in an action ex contractu plaintiff is not entitled to exemplary damages."

California:

Silberg vs. California Life Ins. Co., 521 P. 2d 1103. This is an action resulting from the insurer's failure to make medical payments. The court ruled that the insurer "breached a covenant of good faith" but affirmed the granting of a new trial on the grounds of insufficient evidence to support a verdict of $500,000 in punitive damages.

Egan vs. Mutual of Omaha. Reported in the Wall Street Journal and the National Underwriter, 1974. The case arises from injury resulting from a fall by a roofer. The accident coverage carrier reclassified Egan's disability to sickness, rather than accident, limiting benefits to only three months, as opposed to lifetime. A superior court verdict awarded compensatory mental distress and punitive damages.

Richardson vs. Employers Liability Assur. Corp. 102 Cal. Rptr. 547. A case involving uninsured motorist coverage. Appellate Court held punitive damages were recoverable for an insurer's breach of good faith and fairness in dealing with an insured, while reversing an award on other grounds.

Gruenberg vs. Aetna Ins. Co., 9 Cal. 3d 566, 108 Cal. Rptr. 480, 510 P. 2d 1032. The court held for the plaintiff for punitive damages for breach of contract.

Florida:

Campbell vs. Government Employees Ins. Co., 306 So. 2d 525. Insurer misrepresented gravity of claim against insured, did not consider any counter offers by plaintiff and an offer to settle within policy limits. Failure to "consider the interest of the insured" and "a reckless disregard of the rights of the insured" were held to support an award for punitive damages and attorney fees.

Indiana:

Vernon Fire and Casualty Ins. Co. vs. Sharp, 316 N.E. 2d 381. Proofs of loss filed by the insured were rejected by the insurers. The insurers alleged a good faith dispute about the amount of liability but the court held that "policy provisions were so clear that the insurers could not dispute the amount of liability in good faith" and that the insurer's conduct was "heedless disregard of the consequences, malice, gross fraud or oppressive conduct" supporting an award of punitive damages.

Kansas:

(Insurance Company/Agency Contract)

Garrett vs. American Family Mutual Insurance Co., 520 S.W. 2d 102. This case involves an agency agreement between an insurer and his agent. Insurer (principal) held liable for punitive damages because its actions amounted to malicious interference with agent's expirations.

New Mexico:

Crawford vs. American Employers Ins. Co., 526 P. 2d 206. Action by insured on failure of insurer to inform insured of serious question of coverage and an ensuing excess judgment. Action of trial judge in submitting issue of punitive damages to the jury was affirmed by the Appellate Court, although holding the insurer not guilty of conduct justifying the imposition of punitive damages. Insured's attorney fees were awarded, however.

New York:

Gordon vs. Nationwide Mutual Ins. Co., 30 NY 2d 427, 285 N.E. 2d 849. An action on a liability policy for judgment in excess of policy limits. Court held facts, involving cancellation of the policy, and discontinuance of insurer's efforts on advice of counsel, could not support holding of breach of good faith and punitive damages.

Diamond vs. Mutual Life Ins. Co. of New York, Reported in New York Law Journal, 1974. Action under a hospital indemnity policy. The lower court allowed punitive damages but was reversed by the Appellate Court only on the basis that allegations were not sufficient as to fraud and deceit.

George A. Fetzer, Inc. vs. Empire Mutual Ins. Co., Index #72-1580, reported in the New York Law Journal, 1975. Action by insured for carrier's refusal to settle within the policy limits. Liability was virtually certain insurer held liable for punitive damages as a part of an excess judgment.

Oklahoma:

Ledford vs. Travelers Ind. Co., U. S. District Court, Western District, Oklahoma, 1971, F & C Cases 1208. Action for failure of insurer to exercise good faith in settling the insured's claim. Court held that, as there was no tort liability on the part of the insurer (the insured's claim being contractual in nature), there was no basis for claim for punitive damages.

IV. Liability of Governmental Units for Punitive Damages

The question of liability of a municipal corporation has often been resolved by the courts of the several states. Almost universally, it has been held that a municipal corporation is immune from liability for tortious conduct, while acting in a governmental capacity, but liable when acting in a proprietary capacity. Whether exemplary or punitive damages may be recovered in the latter instance has been determined in the negative in a substantial majority of jurisdictions.

In the absence of statutory authority specifically providing for an award of punitive damages, the general holding has been that such an award would contravene public policy, inasmuch as the amount recovered would be charged against the taxpayers. The deterrent principle also has been held to be inappropriate, for the reason that proper and effective corrective measures are available to the electorate. See Ranells vs. Cleveland 43 L.W. 2294, citing Costrich vs. Rochester, 73 NY Supp. 835.

A contrary view was expressed recently in an action against the state of New York in a lower court, however, where the state, by legislative action, had waived its immunity from liability. Punitive damages were held permissible as being in the interest of "public policy" because of the invasion of the state "into almost all sectors of human endeavor" and the fact that the state agency involved had employed an individual (responsible for the tort) who was unfit when employed, the employment constituting reckless conduct on the part of the state agency. Hayes vs. State of New York, 363 N.Y. Supp. 2d 986.

The rationale used in arriving at the decision in the Hayes case, as to states at least, is that where a factual situation would support punitive damages against a private corporate body, they similarly would support recovery against a public corporation. The observation made by the court in this case is that, when one considers the myriad of activities performed

by state agencies (i.e., invading almost all sectors of human endeavor), — "a punitory award will deter irresponsible and reckless performance of duty on the part of those holding responsible and leading executive and administrative positions" seems, on the surface, to reflect a highly possible trend in such cases.

Such a trend is not without some compelling precedent, even disregarding the current nature of activities of public corporations. Reference is made in Restatement of Torts that "In the earliest cases in which punitive damages were allowed, the plaintiffs suffered no substantial harm, or at least no physical or financial harm appeared. These were cases where public officials were guilty of outrageously oppressive conduct." Without trying to support the deterrent theory of punitive damages, one may still reach the conclusion that it <u>is</u> in the interest of public policy to permit punitive damages in factual situations that will support an action against a governmental unit or agency.