California Courts Rule Punitive Damages Award of 16 to 1 Ratio Not Unconstitutionally Excessive

In a somewhat surprising recent decision, the California Court of Appeal upheld a punitive damages award that carried a ratio of more than 16 to 1 based on the compensatory damages awarded by the jury. The ruling was surprising considering the United States Supreme Courts' recent holding that "grossly excessive" punitive damages awards offend due process under the Fourteenth Amendment, and stating that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *State Farm Mut. Automobile Ins. Co. v. Campbell,* 538 U.S. 408, 425 (2003). California courts have once again sent a clear message of willingness to uphold just punitive damages awards under appropriate circumstances, applying a balancing test as opposed to a bright line ratio approach.

The court in *Bullock v. Philip Morris USA, Inc.,* 2011 Cal. App. LEXIS 1081 (Cal. App. 2d Dist., 2011), affirmed an award of $13.8 million in punitive damages and $850,000 in compensatory damages against cigarette manufacturer Philip Morris. The court discussed the impact of the due process limitation on punitive damages, and analyzed the award in the context of the three guideposts for determining whether a punitive damages award is excessive under *State Farm*: "(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 jury and the civil penalties authorized or imposed in comparable cases." *Bullock v. Philip Morris USA,* 2011 Cal. App. Lexis 1081, *22-23 (*quoting State Farm, supra,* 538 U.S. at 418.) The court also took into consideration the defendant's financial condition, which has previously been recognized by California courts as a permissible consideration under the due process clause as necessary to further the state's legitimate interests in punishment and deterrence. *Id.* at 22 (*citing Simon v. San Paolo U.S. Holding Co., Inc.*, 35 Cal.4th 1159, 1185–1186 (2005).) After balancing the competing interests as to each factor, the court concluded that the award was justified, but cautioned slightly against use of this holding to establish a presumption of appropriateness for other cases:

> We believe that the extreme reprehensibility of Philip Morris's misconduct, including the vast scale and profitability of its course of misconduct, and its financial condition justify the $13.8 million punitive damages award against Philip Morris. Our conclusion is the same regardless of whether the ratio of 16 to one can be said to significantly exceed a single-digit ratio, so we need not decide that question. We do not mean to suggest that 16 to one would be an appropriate ratio in another case involving extreme reprehensibility or to establish any kind of presumption, but merely conclude, based on the facts in this case, that the $13.8 million punitive damages award is reasonable, not arbitrary, and does not offend due process. *Id.* at 58.

However, in a footnote, the court noted that "'[T]he presumption of unconstitutionality applies only to awards exceeding the single-digit level 'to a significant degree.' (*State Farm, supra*, 538 U.S. at p. 425.)'" (*Simon, supra*, 35 Cal.4th at p. 1182, fn. 7.) Thus, the court sent a clear message that it did not believe that a 16 to 1 ratio exceeded the single-digit level to a significant degree, and left the door open for other California courts to allow punitive damages awards above the single-digit ratio.

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