

Short Curcuted: 3rd Circuit Reduces Punitive Damage Award to Bad Faith Plaintiffs

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On Dec. 24, the 3rd U.S. Circuit Court of Appeals utilized an insurance bad faith case to comment on the constitutionality of punitive damage awards. In *Jurinko v. Medical Protective Co.*, the court provided guidance to all Pennsylvania courts and litigants who have struggled to balance the ratio between compensatory and punitive damages.

Specifically, the *Jurinko* court reduced the punitive damages imposed against the defendant insurer from a ratio in excess of 3:1 downward to 1:1. In assessing the ratio, while following the guideposts laid out in the landmark U.S. Supreme Court cases of *Gore v. BMW* and *State Farm v. Campbell*, the 3rd Circuit focused on a substantial award of compensatory damages in the trial court, along with the nature of the harm committed by the insurer.

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We believe that given the current state of the law in this area, the *Jurinko* case may have far-reaching implications, and it demonstrates the application of developing Supreme Court precedent in the area of insurance bad faith litigation.

The case arose from a medical malpractice suit brought by Jurinko against two doctors, Marcincin and Edelman, in the Court of Common Pleas of Philadelphia County. Both doctors were insured by Medical Protective Company, which provided \$200,000 in malpractice coverage. The Medical

Professional Liability Catastrophic Loss Fund (MCARE Fund) provided excess coverage up to \$1 million.

Medical Protective initially retained the same attorney to represent both defendant doctors. The retained defense attorney subsequently withdrew from the representation of Edelman, but continued to represent Marcincin. The MCARE Fund provided separate counsel for Edelman.

Ultimately, settlement discussions took place. Jurinko, on the strength of negligence allegations, initially demanded \$4 million to settle the case. After a settlement conference, during which a judge recommended the case settle between \$1.5 and \$2 million, Jurinko reduced the demand to \$2 million.

Medical Protective offered \$50,000 on behalf of Marcincin. The MCARE fund discussed a joint settlement offer with Medical Protective totaling \$650,000, with Medical Protective paying \$150,000 and MCARE paying the remainder. Medical Protective, however, did not increase its \$50,000 offer.

During trial, Jurinko's settlement demand was reduced yet again to \$1.1 million. Medical Protective's offer remained \$50,000, although both Marcincin's attorney and Medical

Protective itself valued the case between \$750,000 and \$1 million. The jury verdict came back in favor of Edelman but against Marcincin for \$2.5 million, which was \$1.3 million in excess of his insurance coverage.

Marcincin assigned his bad faith claim to Jurinko. Suit was filed in the Eastern District of Pennsylvania against Medical Protective. The bad faith claim centered on Medical Protective's refusal to settle the case within policy limits and simultaneous failure to appoint separate defense counsel for the two defendant doctors.

During the bad faith trial, Medical Protective's claims adjuster admitted he acted unreasonably in settlement negotiations and that he intentionally refused to tender policy limits as leverage to obtain more money from the MCARE Fund towards settlement. The claims adjuster further admitted he knowingly appointed defense counsel to represent both doctors despite the conflict of interest. The jury awarded over \$1.6 million in compensatory damages and \$6.25 million in punitive damages against Medical Protective.

On appeal, Medical Protective challenged the sufficiency of evidence supporting the bad faith verdict and the constitutionality of the punitive damage award. The 3rd Circuit upheld the finding of bad faith and the imposition of punitive damages, but reduced the punitive damage award.

In doing so, the court examined the three guideposts created by the U.S. Supreme Court in *BMW of North America Inc. v. Gore* to determine whether a punitive damage award was grossly excessive and violative of the Fourteenth Amendment's due process requirement, namely:

- The degree of reprehensibility of the defendant's conduct;
- The disparity between the actual or potential harm suffered by plaintiff and the amount of the punitive award; and
- The difference between the punitive damage award and any applicable civil penalties imposed in similar cases.

In this context, the *Jurinko* court, also cited *State Farm v. Campbell*, another insurance bad faith case, in which the Supreme Court commented that due process requirements are not likely satisfied in cases where a punitive damage award exceed a single digit ration in comparison to the compensatory damage award. The court also noted that recently, in *Exxon Shipping v. Baker*, the Supreme Court held that under federal maritime law, the punitive compensatory damage ratio could not exceed 1:1.

In the aftermath of *Gore* and *Campbell*, many believed that the high court had set the stage for the elimination of so-called excessive punitive damage awards. However, many decisions throughout the country supported hefty punitive damage awards, with rations in excess of 1:1, while still ostensibly adhering to the *Gore* guideposts. The *Jurinko* court did not support any higher ratio and is extremely important for that specific reason. The 3rd's Circuit's detailed analysis in the case, therefore, is worth additional analysis.

The *Jurinko* court scrutinized each of the guideposts and found that none of them supported the over 3:1 ratio. In assessing the degree of reprehensibility of Medical Protective's conduct, the court analyzed an additional five factors:

- Whether the harm caused was physical versus economic;
- Whether the conduct evidenced an indifference to or reckless disregard of the health and safety of others;
- The financial vulnerability of the injured party;
- Whether or not the conduct was repeated; and
- Whether the harm resulted from intentional malice, trickery or deceit or was an accident.

Though the court found that the carrier's bad faith conduct was intentional – and left Marincin financially vulnerable with his life savings at stake – there was no evidence that the harm caused by Medical Protective was physical, or that the carrier exhibited similar conduct towards other insureds.

Next, the *Jurinko* court reviewed the disparity between the harm suffered by Jurinko and the amount of the punitive damage award. Referring to the *Campbell* decision, the court acknowledged that high compensatory damage awards may only justify a ratio to punitive damages in an equal amount.

Again, the court noted that the harm caused by Medical Protective was only economic as opposed to physical. Though the carrier failed to act in Jurinko's best interests, the court held that there was no intent to victimize him and the compensatory damages awarded against Medical Protective were substantial. Therefore, according to the court, the evidence supported a reduced amount.

Lastly, the *Jurinko* court analyzed the disparity between the punitive damages and civil penalties. Interestingly, the court acknowledged that it previously had difficulty in applying this guidepost in *Willow Inn v. Public Service Mut. Ins. Co.*, where it affirmed a punitive damage award thirty times the \$5,000 civil penalty imposed by Pennsylvania's Unfair Insurance Practices Act.

The court distinguished *Willow Inn*, noting that the punitive damages imposed were 1,250 times the available civil penalty and concluding that the greater disparity warranted a reduction of the punitive damage award. Based on the moderate degree of reprehensibility, the large award of compensatory damages and the disparity between the punitive award and applicable civil penalties, the *Jurinko* court reduced the punitive damage award to an amount equal to the compensatory damages.

Conceptually, *Jurinko* was a typical excess liability bad faith case with allegations stemming from an insurer's refusal to settle the case against its insured within policy limits. However, in our opinion, what makes *Jurinko* so distinct is the court's strong analytical support, in the wake of U.S. Supreme Court precedent for a 1:1 ratio despite the clear record of intentional conduct by the carrier, as admitted by its own adjuster.

This type of evidence is exceedingly rare in insurance bad faith cases. Further enhancing the significance of the 3rd Circuit's decision is the court's refusal to endorse a punitive damage award of more than 1:1, despite the admission of intentional bad faith conduct. While some Pennsylvania decisions have imposed punitive damages without more, *Jurinko* seems to prohibit excessive punitive awards without a finding of reprehensibility.

Jurinko also suggests that where the compensatory damages are substantial, courts will be hard pressed to justify a ratio in excess of 1:1. Unfortunately, the 3rd Circuit has left open to debate the question of what constitutes a substantial compensatory damage award. Certainly, the \$1.6 million in compensatory damages in *Jurinko* made it easier for the court to consider the damages as "substantial." At the other end of the spectrum are the \$2,000 in compensatory damages awarded in *Willow Inn*, excluding attorney fees and costs. It is for future courts to decide what is and is not substantial.

Lastly, based on the civil penalty for violations of the Unfair Insurance Practices Act, unless an insurer's conduct warrants the imposition of multiple civil penalties, the satisfaction of the third *Gore* guidepost may be elusive. How this issue will develop in the future as courts consider the constitutional limits of bad faith awards is open to debate, especially considering the courts frequently preclude evidence of other bad faith cases against insurers, and the Supreme Court has prohibited the use of punitive damage awards to punish harm to non-parties. Once again, only time will tell.

Can one finally say that the era of runaway punitive damage awards is at an end? Probably not. The *Jurinko* case, despite its thoughtful analysis and timeliness, was not deemed precedential. The case will, however, provide guidance in insurance bad faith cases and to litigants addressing the size and limits of punitive damage exposures. The Federal Rules of Appellate Procedure do allow non-precedential matters to be cited as persuasive authority. So, the true import of the decision will be determined by whether other courts embrace its rationale.

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