

# The Impact of *State Farm v. Campbell*: A Two-Year Retrospective

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## Introduction

The Supreme Court's decision in *State Farm Mutual Automobile Insurance Co. v. Campbell*<sup>1</sup> was greeted by many in the defense bar, including me, as a much-needed message to lower courts to impose greater procedural and substantive constraints on punitive damages. I saw in *State Farm* a clear command to lower courts to provide juries with more detailed instructions for the setting of punitive damages, to restrict the admission of evidence that is at most tangentially relevant but that carries a high risk of inflaming juries into returning arbitrary and excessive awards, and to reduce awards of punitive damages more aggressively than had previously been customary.<sup>2</sup> Two years have now passed since *State Farm* was decided, and well over 100 cases have addressed *State Farm*'s impact on required jury instructions, the admissibility of evidence, and, most frequently, the permissible amount of punitive damages.

Drawing on these two-years' worth of decisions, I explore in this article the extent to which *State Farm* has lived up to the promise that I and many others saw in it. My conclusion is that *State Farm* has had a mitigating effect on the ratio of punitive to compensatory damages that lower courts have been willing to uphold, but that this mitigating effect is not as substantial as I and others in the defense bar had hoped it would be. Courts hostile to the notion of judicial limitations on punitive damages have endeavored to distinguish *State Farm* or otherwise evade the guidance contained in it, while courts that are predisposed to being suspicious of jury-

**The Supreme Court's decision two years ago in *State Farm v. Campbell* was heralded by many in the defense bar as a panacea for the problem of run-away punitive damages awards. Has it had the anticipated effect?**

imposed punitive damages have embraced and rigorously applied some of the more restrictive pronouncements in the opinion. Similarly, some courts have regarded *State Farm* as mandating more detailed jury instructions, while others have seen in it no hint that greater efforts should be made to cabin juries' punishment-setting discretion. Finally, the published opinions addressing evidentiary issues are similarly a mixed bag.<sup>3</sup> Several courts have taken the Supreme Court's hint to restrict the admission of tangential "bad-company" evidence, but at least as many have treated *State Farm* as imposing no limitation on the admissibility of evidence beyond that already articulated in Federal Rule of Evidence 403 and its state counterparts. Of course, the published opinions may not be a representative sample. In my experience, much narrowing of the evidence occurs through rulings on motions in limine, which generally are made from the bench and rarely find their way into published opinions.

Although the number of post-*State Farm* insurance bad-faith decisions may not be high enough to draw any statistically significant conclusions, my perception is that courts have not treated them any differently than other categories of cases. That is to say, some courts reviewing punitive awards against insurers have strived to minimize the impact of *State Farm*, while others have construed it as a powerful limitation on the permissible ratio of punitive to compensatory damages.

Because few lawyers interested in the topic of punitive damages are not already completely familiar with the facts of *State Farm*, I will spare some paper and skip directly to a dis-

cussion of *State Farm*'s impact in the lower courts, addressing bad-faith cases whenever relevant. This article is comprised of three principal sections. The first focuses on *State Farm*'s impact on the punitive/compensatory ratios that courts have found acceptable post-*State Farm*. The next section discusses the extent to which lower courts have construed *State Farm* to require the use of more detailed jury instructions. The final section discusses the published decisions addressing *State Farm*'s impact on evidentiary issues.

## Excessiveness Review Post *State Farm*

In *BMW of North America, Inc. v. Gore*,<sup>4</sup> the Supreme Court identified three guideposts for determining whether a punitive damages award is unconstitutionally excessive—(i) the degree of reprehensibility of the conduct; (ii) the ratio of the punitive damages to the actual or potential harm to the plaintiff; and (iii) the disparity between the punitive damages and the legislatively established penalties for comparable conduct. The Court refined these guideposts in *State Farm*, providing substantial additional guidance about each one. Because the extent to which the lower courts are faithfully applying the guidance given by the Court on the first and third guideposts is largely irrelevant to the macro point I am exploring here, I will not dwell on the details of that guidance. Instead, I limit my focus to the second guidepost, which is the most objective means of measuring the effects of *State Farm* in punitive damages litigation.

The ratio guidepost has confounded lower courts since the Supreme Court first introduced it into the constitutional analysis because the Court has “consistently rejected the notion that the constitutional line is marked by a simple mathematical formula.”<sup>5</sup> In *State Farm*, though again declining “to impose a bright-line ratio which a punitive damages award cannot exceed,”<sup>6</sup> the Court did make some progress toward clearing up the confusion.

Specifically, the Court stated that “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process”; reiterated its prior statement that a punitive award of four times compensatory damages was likely to “be close to the line of constitutional impropriety”; indicated that, though “not binding,” the 700-year-long history of double, treble, and quadruple damages remedies (*i.e.*, ratios of 1:1 to 3:1) is “instructive”; and explained that, although a higher ratio may be permissible when “a particularly egregious act has resulted in only a small amount of economic damages,” “[w]hen

compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.”<sup>7</sup> Applying these guidelines to the facts of the case before it, the Court observed that, even though *State Farm*'s conduct was “reprehensible” and “merit[ed] no praise,” “a punitive damages award at or near the amount of compensatory damages”—*i.e.*, a 1:1 ratio—was likely the constitutional maximum.<sup>8</sup>

Although the opinion does not say so directly, it seems clear from its discussion of ratios that the maximum permissible ratio will vary from case to case based principally on two variables—the degree of reprehensibility of the conduct and the amount of the compensatory damages. The maximum permissible ratio is directly related to the former and inversely related to the latter. In other words, for any particular degree of reprehensibility, as the compensatory damages increase, the maximum permissible ratio decreases. And for any particular amount of compensatory damages, the lower on the reprehensibility spectrum the conduct falls, the lower the maximum permissible ratio.

So how has this explicit and implicit guidance been applied in the lower courts? There can be no question that the Court's admonition that few awards in excess of a single-digit multiple of the actual or potential harm will pass muster has had a marked impact. Numerous courts have read *State Farm* as creating a presumptive cut-off at 9:1.<sup>9</sup> Indeed, of the 26 published post-*State Farm* cases decided before March 1, 2005 in which the actual or potential harm to the plaintiff exceeded \$10,000 and the punitive award was more than a single-digit ratio of the harm, courts reduced the punitive award to a single-digit multiple on 16 occasions and either vacated the award entirely or remanded for reconsideration of the proper amount in three more. Of the seven remaining cases, in only three did the court allow a ratio in excess of 12:1—*i.e.*, “exceeding a single-digit ratio \* \* \* to a significant degree.”<sup>10</sup> Two of those involved criminal conduct that the trial courts properly regarded to be highly reprehensible.<sup>11</sup>

By the same token, several courts have misread *State Farm* as creating a safe harbor for any punitive award that is less than a double-digit multiple of compensatory damages, upholding punitive awards that were a high-single-digit multiple of compensatory damages without inquiry into the relative degree of reprehensibility of the conduct or the extent to which the compensatory damages, attorneys' fees, and other consequences suffered by the defendant already accomplish the deterrent and retributive functions of punitive damages.<sup>12</sup>

By contrast, a few courts have understood that a 9:1 ratio should be reserved for cases of high reprehensibility, reducing punishments that were within single digits to lower within the single-digit range.<sup>13</sup>

Similarly, a number of courts, including several California appellate courts, have noted that, when the defendant's conduct is of moderate reprehensibility and the damages are neither large nor small, a 4:1 ratio is generally the cut-off.<sup>14</sup> As with the 9:1 line, however, several courts have regarded 4:1 to be a safe harbor even when compensatory damages are quite large and the conduct is not especially egregious.<sup>15</sup> To look at the matter on a more macro level, of the 32 published post-*State Farm* cases decided by March 1, 2005 in which the actual or potential harm was \$100,000 or higher and the punitive award was more than five times that harm, courts reduced the ratio to 4:1 or lower twelve times.<sup>16</sup>

Finally, a few courts have taken seriously the Supreme Court's statement that, when compensatory damages are "substantial," a 1:1 ratio may mark the outer limit of the due process guarantee—even when the conduct, as in *State Farm*, is deemed to be "reprehensible." For example, observing that \$600,000 "is a lot of money," the Eighth Circuit reduced a \$6,063,750 punitive award that was just over ten times the plaintiff's \$600,000 compensatory award to \$600,000 even though the conduct at issue—racial harassment in the workplace—rises high on the reprehensibility spectrum.<sup>17</sup> Similarly, another panel of the same court reduced a \$15 million punitive award to \$5 million, roughly equal to the amount of compensatory damages, despite concluding that the conduct of the defendant cigarette manufacturer was "highly reprehensible."<sup>18</sup>

Defendants in insurance bad-faith cases have fared about as well as defendants in other categories of cases. Some courts, most notably the Ninth Circuit, have regarded *State Farm* as creating a safe harbor for single-digit ratios and therefore have upheld multimillion dollar punishments against insurers with little serious scrutiny.<sup>19</sup> The California Court of Appeal, by contrast, seems to have settled on 4:1 as the cutoff for most cases of insurance bad faith.<sup>20</sup> Finally, a federal district court has reduced a \$79 million punitive award to \$7 million, concluding that, because the compensatory damages were "substantial," *State Farm* permitted no more than a 1:1 ratio.<sup>21</sup>

Of course, these macro observations gloss over a lot of the nuances in the cases. For example, one important issue in

insurance bad-faith cases is how to calculate the denominator of the punitive/harm ratio. Shortly after *State Farm* was decided, the Wisconsin Supreme Court and a federal district court in Pennsylvania each allowed high multiples of punitive to compensatory damages on the ground that the punitive damages were not disproportionate to the potential harm that could have befallen the insured.<sup>22</sup> The Third Circuit has since rejected the Pennsylvania district court's broad notion of "potential harm," but nonetheless upheld the punitive verdict on the alternative ground that attorneys' fees awarded under Pennsylvania's bad-faith statute should be included in the denominator of the punitive damages/harm ratio.<sup>23</sup> Whether or not other courts adopt broad notions of potential harm or elect to enhance the denominator in other ways as a means of upholding seemingly disproportionate punitive awards remains to be seen.

### Jury Instructions Post *State Farm*

I read the Supreme Court's opinion in *State Farm* as a call for lower courts to reform the manner in which punitive damages are administered. Before turning to the excessiveness issue in the case, the Supreme Court observed that, though punitive awards "serve the same purposes as criminal penalties, defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding."<sup>24</sup> This, it explained, increased its "concerns over the imprecise manner in which punitive damages systems are administered."<sup>25</sup> The Court was particularly concerned about the adequacy of jury instructions, lamenting that "[j]ury instructions typically leave the jury with wide discretion in choosing amounts" of punitive damages and "do little to aid the decisionmaker in its task of assigning appropriate weight to evidence that is relevant and evidence that is tangential or only inflammatory."<sup>26</sup>

Have the lower courts taken the hint? Some have. For example, in one significant post-*State Farm* decision, the California Court of Appeal observed that, under *State Farm*, "the instructions must not invite the jury to impose damages sufficient to punish and deter all conduct by defendant of the *type* directed toward the [] plaintiffs" and accordingly concluded that, because the instructions before it contained no such limitation, "the jury was fundamentally misinstructed concerning the *amount* of punitive damages it could award in the present case."<sup>27</sup> In another case, the Kentucky Supreme Court granted a new trial on the ground that "the jury instructions contained no limitations on extraterritorial punishment."<sup>28</sup> The South

Dakota Supreme Court has also indicated that trial courts must instruct juries on the *State Farm* guideposts.<sup>29</sup>

Other courts, however, have seen *State Farm* as imposing no new requirements for jury instructions.<sup>30</sup> One of the most mystifying examples from my own experience is the refusal of some trial courts to instruct juries that they may not punish the defendant for conduct that was directed at non-parties after having allowed the plaintiff to introduce evidence of such conduct. To me, the requirement for such an instruction seems obvious from the Supreme Court's statement in *State Farm* that "[d]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis \* \* \*. Punishment on these bases creates the possibility of *multiple* punitive damages awards for the *same* conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains."<sup>31</sup> I have two cases (including one bad-faith case) in which this issue is squarely presented, so time will tell whether appellate courts will construe *State Farm* as requiring a "harm-to-non-parties" instruction when one is requested. Similarly, in another case in which I am involved, the trial court refused to instruct the jury that punitive damages must be reasonably related to the injury to the plaintiff. Although the Supreme Court stated in no uncertain terms in *State Farm* that "[t]he precise award in any case \* \* \* must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff" and that "courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered,"<sup>32</sup> the district court reasoned that these were tasks for post-verdict review and that the jury could be kept in blissful ignorance of the relevant standards. Again, a higher court will have to resolve whether the district court was taking an improperly narrow view of the Supreme Court's opinion.

### **Admissibility Of Evidence Post *State Farm***

The Supreme Court made a number of statements in the course of the *State Farm* opinion that I and other observers took as a signal to lower courts that they should more aggressively control the scope of evidence admitted in punitive damages cases. Recall that the Supreme Court saw the case as being about the proper punishment for an isolated act of third-party bad faith and observed that it was, "instead, used as a platform to expose, and punish, the perceived deficiencies of

*State Farm's* operations throughout the country."<sup>33</sup> Clearly unhappy with that metamorphosis, the Court admonished:

A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. A *defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business*. Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis \* \* \*. Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains.<sup>34</sup>

It later added that, for a defendant to be treated as a recidivist warranting heightened punishment, "courts must ensure the conduct in question replicates the prior transgressions"<sup>35</sup> and explained that "[t]he reprehensibility guidepost does not permit courts to expand the scope of the case so that a defendant may be punished for any malfeasance, which in this case extended for a 20-year period."<sup>36</sup> Meanwhile, at the very outset of the opinion, it expressed chagrin about the presentation of "evidence that has little bearing as to the amount of punitive damages that should be awarded" and the fact that "[v]ague [jury] instructions \* \* \* do little to aid the decisionmaker in its task of assigning appropriate weight to evidence that is relevant and evidence that is tangential or only inflammatory."<sup>37</sup>

Were these statements a message to lower courts that they should play more of a gatekeeper role in screening evidence of general corporate malfeasance? I certainly thought so. After all, there can be no gainsaying that the breathtaking \$145 million punitive award in *State Farm* itself never would have been rendered had the plaintiffs not been allowed to introduce a raft of evidence of *State Farm's* supposed unsavory practices over a 20-year period under the guise of demonstrating that the third-party bad faith in their case was part of a broader pattern of cheating insureds. Yet *State Farm* seems to have had at best mixed effect on the admissibility of general bad-company evidence.

A few courts have taken *State Farm* as an admonition to tighten the evidentiary screen. For example, the Eighth Circuit has observed that the Supreme Court, in *State Farm*,

“emphasized that the relevant behavior [in punitive damages calculations] must be defined at a low level of generality,” and could be considered in the reprehensibility analysis only if it was “factually as well as legally similar to the plaintiff’s claim.”<sup>38</sup> Although the Eighth Circuit did not take the logical next step and hold that the evidence should not have been admitted, the Arkansas Supreme Court recently did just that, ordering a new trial on punitive damages in a tort case against a chemical company because the plaintiffs “attempted to use Mississippi evidence in order to show a pattern or scheme on the part of the [defendant]” and the court was unable to “determine whether the Mississippi evidence and the arguments of counsel impacted the jury’s award of punitive damages.”<sup>39</sup> Similarly, the South Carolina Court of Appeals ordered a new trial on punitive damages because the jury had been exposed to evidence of conduct that was too dissimilar to the punishable conduct to be relevant to the setting of punitive damages under *State Farm*.<sup>40</sup>

On the other hand, several other courts have seen *State Farm* as necessitating no deviation from the prevailing laissez faire attitude toward the admissibility of “bad company” evidence that is argued to be “relevant to punitive damages.” For example, in a case involving a pharmaceutical manufacturer’s failure to disclose drug interaction information, the Oregon Court of Appeals, giving nary a nod to *State Farm*’s limitations, upheld the admission of evidence of “nationwide misconduct” because it was “evidence of misconduct of the sort that injured plaintiff.”<sup>41</sup> Similarly, two panels of the California Court of Appeals have found nothing wrong with juries’ consideration of conduct by tobacco companies affecting individuals outside of California, even though that conduct may have been lawful where it occurred.<sup>42</sup>

*State Farm* appears to have had mixed impact in insurance bad-faith cases as well. In some cases, courts have invoked *State Farm* and limited the scope of admissible and even discoverable evidence.<sup>43</sup> Courts in several other cases, however, have allowed a broad inquisition into the defendant’s supposed motive to save money through claim handling (the precise motive that served as the basis for the admissibility of the bad-company evidence in *State Farm*

itself) and allegedly wrongful practices that were not visited upon the plaintiff (the very kind of evidence found objectionable by the Supreme Court in *State Farm*).<sup>44</sup> These courts view *State Farm* as setting an exceedingly low threshold of relevance and seem oblivious to the concerns expressed by the Supreme Court about the prejudicial effect that this kind of evidence can have.

Of course, there is no way of knowing whether the published decisions refusing to limit the admission of “bad-company” evidence are representative. In some cases, *State Farm* may have deterred plaintiffs’ counsel from attempting to introduce their more tangential evidence. And in other cases, courts may have excluded such evidence in a bench ruling after hearing argument on motions in limine. Plaintiffs rarely appeal that kind of ruling. Still, the fact that some courts seem disinclined to limit the sideshows at all is disturbing. It is too soon to say whether the appellate courts will ultimately rein in the kind of unbridled inquisitions that were allowed in *State Farm* and continue to be allowed in other insurance bad-faith cases.

## Conclusion

There can be no question that *State Farm* has had a moderating effect on the size of the punitive/compensatory ratios (and concomitantly the absolute amount of punitive damages) that reviewing courts have found acceptable. Although only a few courts seem to have taken to heart the Supreme Court’s suggestion that a 1:1 ratio may be at or near the constitutional limit when the compensatory damages are substantial, virtually all courts view ratios in excess of single digits to be out of bounds except when compensatory damages are small, and a growing number of courts are employing 4:1 or 3:1 as a cut-off when damages are in the moderate range. Several courts, meanwhile, have recognized the need for more detailed instructions employing some of the guidance provided by the Supreme Court in *State Farm*. Finally, *State Farm*’s effect on the admissibility of bad-company evidence has been mixed. Some courts have embraced the Supreme Court’s suggestion that they do something about “evidence that is tangential or only inflammatory,”<sup>45</sup> while others have treated the matter as something that can be dealt with via excessiveness review.

## Endnotes

- 1/ 538 U.S. 408 (2003).
- 2/ See Evan M. Tager, *The Implications of State Farm v. Campbell for the Future of Punitive Damages in Bad Faith Litigation*, MEALEY'S LITIGATION REPORT: INSURANCE, Apr. 22, 2003, at 28.
- 3/ I use the term "published" as shorthand for decisions that are available in either a reporter series or on Lexis.
- 4/ 517 U.S. 559 (1996).
- 5/ *BMW*, 517 U.S. at 582.
- 6/ 538 U.S. at 425.
- 7/ 538 U.S. at 425.
- 8/ 538 U.S. at 419-20, 429.
- 9/ See, e.g., *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004); *DeNofio v. Soto*, 2003 U.S. Dist. LEXIS 12225, at \*7-\*8 (E.D. Pa. June 24, 2003); *McClain v. Metabolife Int'l, Inc.*, 259 F. Supp. 2d 1225, 1231 (N.D. Ala. 2003), *rev'd on other grounds*, \_\_\_ F.3d \_\_\_, 2005 U.S. App. Lexis 3507 (Mar. 2, 2005); *Eden Elec., Ltd. v. Amana Co.*, 258 F. Supp. 2d 958, 973-74 (D. Iowa 2003), *aff'd*, 370 F.3d 824 (8th Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 1518 (Feb. 22, 2005); *Reading Radio, Inc. v. Fink*, 833 A.2d 199, 215 n.3 (Pa. Super. 2003).
- 10/ *State Farm*, 538 U.S. at 425.
- 11/ *Planned Parenthood v. Am. Coalition of Life Activists*, 300 F. Supp. 2d 1055, 1059-60 (D. Or. 2004); *Southern Union Co. v. Southwest Gas Corp.*, 281 F. Supp. 2d 1090, 1095-98, 1105 (D. Ariz. 2003).
- 12/ See *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1044 (9th Cir. 2003) (focusing solely on the Court's observation that single-digit multiples are more likely to pass constitutional muster than higher ratios and upholding 7.2:1 ratio where there was \$360,000 in compensatory damages), *cert. denied*, 2004 U.S. LEXIS 1855 (Mar. 8, 2004); *Diesel Mach., Inc. v. B.R. Lee Indus., Inc.*, 328 F. Supp.2d 1029, 1052-53 (D.S.D. 2003) (upholding 6.5:1 ratio where compensatory damages were \$665,000); *Jones v. Delaware Cmty. for Individual Dignity*, 2004 Del. Super. LEXIS 133, at \*15 (Del. Super. Ct. Apr. 29, 2004) (unpublished) (upholding 9.6:1 ratio where compensatory damages were \$150,000); *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 584 S.E.2d 120, 141 (S.C. Ct. App. 2003) (upholding 9.9:1 ratio where compensatory damages were \$157,450); *Haggard Clothing Co. v. Hernandez*, 2003 Tex. App. LEXIS 7117, at \* 21 (Tex. Ct. App. Aug. 21, 2003, pet. filed) (focusing exclusively on Court's reference to single-digit ratios in upholding 6.7:1 ratio where compensatory damages were \$210,000); *Trinity Evangelical Lutheran Church & Sch.-Freistadt v. Tower Ins. Co.*, 661 N.W.2d 789, 803 (Wis. 2003) (implicitly concluding that 7:1 ratio of punitive damages to \$490,000 in potential harm was not suggestive of an excessive punishment), *cert. denied*, 124 S. Ct. 925 (2003).
- 13/ See, e.g., *Eden*, 258 F. Supp. 2d at 975 (reducing 8.5:1 ratio to 4.8:1 where compensatory damages were \$2,100,000 and observing that ratios in the high single digits are reserved for cases in which all five reprehensibility factors are present); *Waddill v. Anchor Hocking, Inc.*, 78 P.3d 570, 577 (Or. Ct. App. 2003) (reducing 9.9:1 ratio to 4:1 where compensatory damages were \$100,854); *Harris v. Archer*, 134 S.W.3d 411, 449 (Tex. Ct. App. 2004) (reducing 7.4:1 ratio to 4:1 where compensatory damages were \$203,895), *rev. denied*, 2005 Tex. LEXIS 152 (Feb. 11, 2005); *Chapa v. Tony Gullo Motors I, L.P.*, 2004 Tex. App. LEXIS 7751, at \*26 (Tex. Ct. App. Aug. 24, 2004) (unpublished) (reducing 8.6:1 ratio to 4.3:1 where compensatory damages were \$28,852).
- 14/ See, e.g., *Stogsdill v. Healthmark Partners, L.L.C.*, 377 F.3d 827, 832 (8th Cir. 2004); *Fresh v. Entertainment U.S.A. of Tenn., Inc.*, 340 F. Supp. 2d 851, 860 (W.D. Tenn. 2003); *Textron Fin. Corp. v. National Union Fire Ins. Co.*, 13 Cal. Rptr. 3d 586, 604 (Cal. Ct. App. 2004); *Romo v. Ford Motor Co.*, 6 Cal. Rptr. 3d 793, 811-13 (Cal. Ct. App. 2003); *Johnson v. Ford Motor Co.*, 2003 Cal. App. Unpub. LEXIS 11038, at \*23 (Cal. Ct. App. Nov. 25, 2003), *rev. granted*, 2004 Cal. LEXIS 2549 (Mar. 24, 2004); *Diamond Woodworks, Inc. v. Argonaut Ins. Co.*, 135 Cal. Rptr. 2d 736, 762 (Cal. Ct. App. 2003); *Taylor Woodrow Homes, Inc. v. Acceptance Ins. Cos.*, 2003 Cal. App. Unpub. LEXIS 5208, at \*14 (Cal. Ct. App. May 28, 2003) (unpublished); *Waddill*, 78 P.3d at 576; *Harris*, 134 S.W.3d at 449; *Chapa*, 2004 Tex. App. LEXIS 7751, at \*25-\*26. Some courts have applied a 3:1 limit in these circumstances. See, e.g., *Young v. Daimlerchrysler Corp.*, 2004 U.S. Dist. LEXIS 22813, at \*12-\*13 (S.D. Ind. Oct. 25, 2004); *Park v. Mobil Oil Guam, Inc.*, 2004 Guam LEXIS 22, at \*48, \*52 (Guam Nov. 16, 2004); *Cass v. Stephens*, \_\_\_ S.W.3d \_\_\_, 2004 Tex. App. LEXIS 8010, at \*92 (Tex. Ct. App. Aug. 31, 2004).
- 15/ *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1014 (9th Cir. 2004) (2.6:1); *Bogle v. McClure*, 332 F.3d 1347, 1362 (11th Cir. 2003) (3.8:1), *cert. dismissed*, 124 S. Ct. 1168 (2004) (3.8:1); *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 345 F.3d 1366, 1372 (Fed. Cir. 2003) (3.3:1), *cert. denied*, 124 S. Ct. 1423 (2004); *Interclaim Holdings Ltd. v. Ness, Motley, Loadholt, Richardson & Poole*, 298 F.

- Supp. 2d 746, 765 (N.D. Ill. 2004) (3.3:1); *Maya B. v. Vogel*, 2004 Cal. App. Unpub. LEXIS 2595, at \*38-\*39 (Cal. Ct. App. Mar. 22, 2004) (unpublished) (2.0:1); *Borne v. Haverhill Golf & Country Club, Inc.*, 791 N.E.2d 903, 916 (Mass. Ct. App. 2003) (3.4:1), *rev. denied*, 795 N.E.2d 573 (2003); *Atler v. Murphy Enters., Inc.*, 104 P.3d 1092, 1100 (N.M. Ct. App. 2004) (3.8:1), *cert. granted* (N.M. Jan. 10, 2005); *Gallegos v. Elite Model Mgmt. Corp.*, 2004 N.Y. Misc. LEXIS 2, at \*13 (N.Y. Sup. Ct. Jan. 6, 2004) (unpublished) (2.4:1); *Austin v. Specialty Transp. Servs., Inc.*, 594 S.E.2d 867, 877 (S.C. Ct. App. 2004) (2.5:1); *Reading Radio, Inc. v. Fink*, 833 A.2d 199, 215 n.3 (Pa. Super. Ct. 2003) (2.7:1); *Boyd v. Goffoli*, \_\_ S.E.2d \_\_, 2004 W. Va. LEXIS 198, at \*35-\*36 (W. Va. Nov. 29, 2004) (3.3:1); *cf. Eden Elec.*, 370 F.3d at 829 (4.8:1); *Greenberg v. Paul Revere Life Ins. Co.*, 2004 U.S. App. LEXIS 388, at \*8-\*9 (9th Cir. Jan. 12, 2004) (unpublished) (4.4:1), *cert. denied*, 124 S. Ct. 2918 (2004); *Union Pac. R.R. Co. v. Barber*, 149 S.W.3d 325, 348 (Ark. 2004) (4.9:1), *cert. denied*, 125 S. Ct. 320 (2004); *Advocat, Inc. v. Sauer*, 111 S.W.3d 346, 361, 363 (Ark. 2003) (4.2:1), *cert. denied*, 540 U.S. 1012 (2003); *Simon v. San Paolo U.S. Holding Co.*, 7 Cal. Rptr. 3d 367, 391 (Cal. Ct. App. 2003) (4.3:1), *rev. granted*, 11 Cal. Rptr. 3d 510 (2004).
- 16/ Additionally, on one occasion, the court remanded for a determination of the appropriate amount of punitive damages.
- 17/ *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004).
- 18/ *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 602-03 (8th Cir. 2005); *see also Czarnik v. Illumina*, 2004 Cal. App. Unpub. LEXIS 10909, at \*31 (Cal. Ct. App. Dec. 3, 2003) (unpublished) (reducing \$5 million punitive award to \$2,196,935 where compensatory damages were \$2,196,935); *Roth v. Farner-Bocken Co.*, 667 N.W.2d 651, 670-72 (S.D. 2003) (where defendant's conduct was not highly reprehensible and compensatory award of \$25,000 was "substantial," an award "at or near the amount of compensatory damages" was appropriate); *cf. Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 66 (2d Cir. 2004) (remanding to district court for reconsideration of \$2,132,896,906 punitive award where compensatory award also was \$2,132,896,906).
- 19/ *See Hangarter*, 373 F.3d at 1014; *Greenberg*, 2004 U.S. App. LEXIS 388, at \*8-\*9; *Marie Deonier & Assocs. v. Paul Revere Life Ins. Co.*, 101 P.3d 742, 753 (Mont. 2004) (reinstating \$1 million punitive award that was 6.7 times \$150,000 compensatory award); *Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 418 (Utah 2004) (holding that a 9:1 ratio was appropriate despite compensatory award of over \$1 million), *cert. denied*, 124 S. Ct. 114 (2004); *Trinity Evangelical Lutheran Church & Sch.-Friestadt v. Tower Ins. Co.*, 661 N.W.2d 789, 803 (Wis. 2003) (upholding punitive award of \$3,500,000 that was approximately seven times potential harm of \$490,000), *cert. denied*, 124 S. Ct. 925 (2003); *see also Hollock v. Erie Ins. Exch.*, 842 A.2d 409, 421-22 (Pa. Super. Ct. 2004) (upholding court-imposed punitive award that was approximately ten times the \$278,825.90 compensatory award).
- 20/ *See Textron Fin. Corp. v. National Union Fire Ins. Co.*, 13 Cal. Rptr. 3d 586, 604-5 (Cal. Ct. App. 2004); *Diamond Woodworks, Inc. v. Argonaut Ins. Co.*, 135 Cal. Rptr. 2d 736, 762 (Cal. Ct. App. 2003); *Taylor Woodrow Homes, Inc. v. Acceptance Ins. Cos.*, 2003 Cal. App. Unpub. LEXIS 5208, at \*14 (Cal. Ct. App. May 28, 2003) (unpublished).
- 21/ *Ceimo v. General Am. Life Ins. Co.*, No. CV-00-1386-PHX-FJM, Order at 4 (D. Ariz. Sept. 17, 2003); *see also Willow Inn, Inc. v. Public Serv. Mut. Ins. Co.*, \_\_ F.3d \_\_, 2005 U.S. App. LEXIS 2391, at \*26 (3d Cir. Feb. 14, 2005) (suggesting that "approximately a 1:1 ratio" "approache[d] the constitutional limit" given the reprehensibility of the defendant's conduct).
- 22/ *See Willow Inn, Inc. v. Public Serv. Mut. Ins. Co.*, 2003 U.S. Dist. LEXIS 9558, at \*8 (E.D. Pa. May 30, 2003) (unpublished) (upholding \$150,000 punitive award that was 75 times actual injury because it was not disproportionate to the potential harm); *Trinity Evangelical*, 661 N.W.2d at 803 (upholding \$3.5 million punitive award that was 199 times the actual injury on ground that it was not disproportionate to \$490,000 in potential harm).
- 23/ *Willow Inn, Inc. v. Public Serv. Mut. Ins. Co.*, 2005 U.S. App. LEXIS 2391, at \*23-\*31.
- 24/ 538 U.S. at 417.
- 25/ 538 U.S. at 417.
- 26/ 538 U.S. at 417, 418.
- 27/ *Romo v. Ford Motor Co.*, 6 Cal. Rptr. 3d 793, 804-05 & n.7 (Cal. Ct. App. 2003) (emphasis in original).
- 28/ *Sand Hill Energy, Inc. v. Smith*, 142 S.W.3d 153, 157 (Ky. 2004).
- 29/ *Roth v. Farner-Bocken Co.*, 667 N.W.2d 651, 671 (S.D. 2003).
- 30/ *See, e.g., Boerner v. Brown & Williamson Co.*, 394 F.3d 594, 606 (8th Cir. 2005) (Bye, J., concurring) (expressing the view that the majority had replicated the instructional error in *State Farm*); *Williams v. Philip Morris, Inc.*, 92 P.3d 126, 141-42 (Or. Ct. App. 2004).
- 31/ 538 U.S. at 423.
- 32/ 538 U.S. at 425-26.

- 33/ 538 U.S. at 420.
- 34/ 538 U.S. at 422-23 (emphasis added).
- 35/ 538 U.S. at 423.
- 36/ 538 U.S. at 424.
- 37/ 538 U.S. at 418.
- 38/ *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 797-98 (8th Cir. 2004); *see also Stogsdill v. Healthmark Partners, LLC*, 377 F.3d 827, 832 (8th Cir. 2004) (substantially reducing amount of punitive damages awarded in part because “substantial trial evidence concerned alleged general conditions at [nursing home] that were not relevant to [how the plaintiff was treated]”); *cf. Richardson v. Tricom Pictures & Prods., Inc.*, 334 F. Supp. 2d 1303, 1324 (S.D. Fla. 2004) (noting, in sexual harassment case, that “the retaliation directed towards [plaintiff] is the only conduct relevant to the reprehensibility analysis, and any reliance in this analysis on [defendant’s] bad act evidence, evidence that he was previously accused of sexually harassing three other female employees, is improper”).
- 39/ *FMC Corp., Inc. v. Helton*, 2005 Ark. LEXIS 66, at \*17-\*19 (Feb. 3, 2005).
- 40/ *Atkinson v. Orkin Exterminating Co., Inc.*, 604 S.E.2d 385, 391-92 (S.C. Ct. App. 2004); *see also Durham v. Vinson*, 602 S.E.2d 760, 766 (S.C. 2004) (remanding for a new trial on punitive damages in medical malpractice action because trial court erroneously allowed evidence of misconduct toward a third party); *cf. In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine)*, 2003 U.S. Dist. LEXIS 19846, at \*14-\*15 (E.D. Pa. 2003) (allowing members of settlement class to bring claim expressly excluded from settlement agreement, but noting that proof in the separate lawsuit “will also be subject to the due process requirements of the federal Constitution on the issue of punitive damages”).
- 41/ *Bocci v. Key Pharms., Inc.*, 76 P.3d 669, 674 (Or. Ct. App. 2003).
- 42/ *See Boeken v. Philip Morris Inc.*, 19 Cal. Rptr. 3d 101, 141 (Cal. Ct. App. 2004), reh’g granted, 2004 Cal. App. LEXIS 1926 (Oct. 19, 2004); *Henley v. Philip Morris Inc.*, 9 Cal. Rptr. 3d 29, 71 (Cal. Ct. App. 2004), *rev. granted*, 12 Cal. Rptr. 3d 591 (2004), *rev. dismissed*, 18 Cal. Rptr. 3d 573 (2004).
- 43/ *See, e.g., Treace v. UNUM Life Ins. Co.*, 2004 U.S. Dist. LEXIS 27181, at \*14 (W.D. Tenn. Aug. 11, 2004) (granting protective order against discovery of State of Georgia’s investigation of business practices on ground that the requested discovery bore no nexus to the harm allegedly suffered by the plaintiff and concerned out-of-state conduct); *Permanent Gen. Assurance Corp. v. Superior Ct.*, 19 Cal. Rptr. 3d 597, 601 (Cal. Ct. App. 2004) (ruling that evidence of insurance company’s “bad faith in denying auto theft claims” was inadmissible in the case at hand because “*Campbell* teaches that punishment based on conduct toward others ‘creates the possibility of multiple punitive damages awards for the same conduct,’ and such exposure would violate the defendant’s due process rights”) (citation omitted), *rev. denied*, 2005 Cal. LEXIS 568 (Jan. 19, 2005); *University Med. Assocs. of the Med. Univ. of S.C. v. UNUM Provident Corp.*, 335 F. Supp. 2d 702, 712 (D.S.C. 2004) (remarking that certain evidence of a “corporate business plan on the part of defendants to deny benefits to insured persons even where the payment of benefits is clearly warranted \* \* \* might be suspect as relevant to the amount of punitive damages under *State Farm*” even if relevant to punitive liability).
- 44/ *See, e.g., Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1019-20 (9th Cir. 2004); *Jackson v. State Farm Mut. Auto. Ins. Co.*, 600 S.E.2d 346, 358-60 (W. Va. 2004) (expert was permitted to testify as to insurer’s conduct in other litigation); *cf. Markham v. National States Inc. Co.*, 2004 U.S. App. LEXIS 25805, at \*17-\*19 (10th Cir. Dec. 14, 2004) (unpublished) (allowing evidence of policy rescissions from across the nation because the trial was not bifurcated and the “challenged evidence was not limited to the issue of punitive damages”); *Saldi v. Paul Revere Life Inc. Co.*, 224 F.R.D. 169, 176-78 (E.D. Pa. 2004) (allowing “broad-based discovery” of general national claims-handling practices with minimal limitations despite insurance company’s argument that the evidence would be inadmissible under *State Farm*).
- 45/ 538 U.S. at 418.

## About the Author

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