

Punitive Damage Awards in New York Since 'State Farm'

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The Supreme Court's 2003 decision in [*State Farm Mutual Automobile Insurance Co. v. Campbell*](#)¹ provided guidance regarding the acceptable limits of punitive damage awards.

Notably, the Court decided that, with a few exceptions, awards that exceed a single-digit ratio of punitive to compensatory damages will not satisfy the requirements of the Due Process Clause. A survey of New York state and federal cases reveals that courts have been generally consistent in applying the guidelines of *State Farm* to limit punitive damages, and are disinclined to accept substantial punitive damage awards by juries.

The 'State Farm' Decision

In *State Farm*, the Supreme Court ruled that a Utah jury's award of \$145 million in punitive damages, where compensatory damages amounted to \$1 million, was excessive and violated the Due Process Clause. The plaintiffs, Curtis and Inez Preece Campbell, claimed that their insurer, State Farm, acted in bad faith in failing to settle, within policy limits, third-party claims that were asserted against Mr. Campbell after an automobile accident. In making its determination, the Court applied three guideposts from its prior case [*BMW of North America, Inc., v. Gore*](#)²:

- 1) the degree of reprehensibility of the defendant's misconduct, including whether it caused physical rather than merely economic harm;
- 2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damage award; and
- 3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

The Court made clear that a defendant can be punished only for conduct that harmed the plaintiff, not for being a generally unsavory individual or business; that defendants should not be subjected to excessive fines because they have deep pockets; and that few awards exceeding a single-digit ratio of punitive to compensatory damages will pass constitutional scrutiny. On this last point, the Court stated that it was not promulgating "rigid benchmarks," and recognized that greater ratios might comply with the Due Process Clause "where a particularly egregious act has resulted in only a small amount of

economic damages" or "where the injury is hard to detect or the monetary value of non-economic harm might have been difficult to determine."³ However, the Court also recognized that when compensatory damages are substantial, a lower amount (such as an amount equal to compensatory damages) reaches the outer limit of due process.

Applying the Ratio

Courts in New York have followed the Supreme Court's guidance in *State Farm* on acceptable ratios of punitive to compensatory damages and have reduced punitive damage awards in cases ranging from employment discrimination to commercial fraud.

In *Parrish v. Sollecito*,⁴ for example, a jury returned a verdict of liability against the plaintiff's former employer and supervisor on her retaliation claim, and awarded \$15,000 in compensatory damages and \$500,000 in punitive damages. The trial court subsequently applied Title VII's cap on damages and reduced the punitive damage award to \$50,000. Although the statutory cap "mitigates the extent of due process issues at stake," the court nonetheless examined the award in light of *State Farm* and determined that the jury's punitive award of \$500,000 -- over 33 times the compensatory damages -- vastly overreached "the single-digit multiplier urged by the Supreme Court."⁵

Punitive damages have also been vacated when the compensatory damages awarded are significant. In [*Motorola Credit Corp. v. Uzan*](#),⁶ the plaintiffs alleged that they were fraudulently induced to lend nearly \$2.7 billion to a company controlled by the Uzan family, purportedly among the richest families in the world. The plaintiffs further alleged that the money was not used to finance a major expansion of corporate operations, as represented, but was instead diverted to other companies controlled by the Uzan family and to family members' own pockets. After a bench trial, the district court found in favor of the plaintiffs and awarded them about \$2.1 billion in compensatory damages and the same amount in punitive damages. Applying *State Farm*, the Second Circuit struck down the punitive award as violating due process even though there was a 1:1 ratio of compensatory to punitive damages. While the court agreed that some amount of punitive damages would be appropriate, it pointed out that neither the plaintiffs nor others suffered physical harm or danger to their health and safety, and that the plaintiffs were not "financially vulnerable."⁷

In *Rosenberg, Minc & Armstrong v. Mallilo & Grossman*,⁸ a law firm and its former associate were found liable for unjust enrichment, misappropriation and tortious interference with prospective business advantage. In that case, the associate devised a scheme for obtaining business from a competing firm by calling its answering service and impersonating a partner retrieving client messages. The associate thereby obtained contact information about the plaintiff's prospective clients and then attempted to persuade them to let his law firm rather than the plaintiff handle their matters. The jury directed the defendants to each pay \$10,500 in compensatory damages, and assessed an additional \$962,036 in punitive damages against the defendant law firm, and \$343,750 against the associate.

The court set aside the punitive damage award against the law firm because there was no evidence that it had any involvement in the scheme and, thus, there was no basis for any punitive damages. The court also reduced the amount of punitive damages for which the associate was liable because the ratio of punitive to compensatory damages (viz., 32:1) did not comport with *State Farm*. However, since the associate's conduct was found to be particularly reprehensible, the court applied a 10:1 ratio and held that the punitive award could be no greater than \$105,000.

In *Gallegos v. Elite Model Mgmt. Corp.*,⁹ an action in which a discharged employee alleged disability

discrimination and retaliation, the New York State Supreme Court upheld an award of \$1.1 million in compensatory damages and \$2.6 million in punitive damages. The court held that the employer's conduct in requiring the plaintiff, an asthma sufferer with an extreme sensitivity to smoke, to sit with heavy-smoking co-workers and to endure cruel treatment about her condition "evinced a reckless disregard for plaintiff's physical health and was reprehensible."¹⁰

In affirming the award, the court particularly noted that the wrongdoing subjected the plaintiff to physical harm since her asthma was aggravated and she developed another chronic respiratory condition as a consequence of the smoking. Although this is the largest punitive damage award accepted by a New York court since *State Farm*, the court adhered to the Supreme Court's guidelines in that it employed a single-digit multiplier and recognized that conduct causing physical injury deserves a more severe penalty.

Nominal Damages

Courts in New York have also examined the exceptions to *State Farm's* recommended ratio where a particularly egregious act has resulted in only a small amount of economic damages, where the injury is hard to detect or where the monetary value of noneconomic harm might be difficult to determine. In these cases, which include allegations of First Amendment violations, police brutality, trespass to chattels, and contract claims, New York courts have recognized situations to which, in the interest of fairness, the recommended ratio should not apply. Even so, *State Farm* has been used to limit, rather than affirm, large punitive damage awards.

The Second Circuit recognized the limits of *State Farm's* recommended ratio in *DiSorbo v. Hoy*.¹¹ There, the plaintiff brought an action under §1983 and New York state law alleging use of excessive force, battery and abuse of process by the police officers who arrested her. The jury awarded the plaintiff \$400,000 in compensatory damages and \$625,000 in punitive damages for her claims of excessive force and battery. On her abuse of process claim, it awarded her only nominal compensatory damages but \$650,000 in punitive damages.

These awards were vacated and the Second Circuit held that \$250,000 in compensatory damages and \$75,000 in punitive damages were warranted. Although the court recognized that "the use of a multiplier to assess punitive damages is not the best tool here" and that an egregious act may result in only a small amount of economic damages, it nonetheless determined that the jury's award was excessive.¹² The court pointed out that the ratio of punitive to compensatory damages on the abuse of process claim was a "staggering 650,000:1."¹³ The court then looked at the civil and criminal penalties for similar conduct and concluded that, compared to other police misconduct cases, a much lower award more accurately reflected the severity of the defendants' acts. Thus, while the court stated it was not mechanically applying a ratio approach, the outcome was similar in that it reined in a large punitive damage award.

The court likewise departed from the single-digit multiplier in *Fabri v. United Technologies Int'l*.¹⁴ The plaintiffs in that case alleged, inter alia, breach of contract, and violations of the Foreign Corrupt Practices Act and Connecticut Unfair Trade Practices Act in connection with deals they had made with the defendants. The jury ruled in favor of the plaintiffs and awarded only \$1 in nominal damages and \$500,000 in punitive damages. On appeal, the Second Circuit recognized that *State Farm's* ratio may be inappropriate in cases where "the plaintiff receives an insignificant or nominal compensatory award," but it nonetheless vacated the award and ordered a new trial on damages.¹⁵ In so doing, the court surveyed punitive damage awards in similar cases and concluded that the jury's award was excessive in comparison and thus did not comport with due process.

State Farm's ratio approach has also been deemed inappropriate in a case for trespass to chattels and violation of the Computer Fraud and Abuse Act. In *Tyco Int'l Inc. v. John Does, 1-3*,¹⁶ an e-mail provider claimed that unidentified defendants, later determined to be one individual, attempted to overload the business's e-mail server with messages in a denial-of-service or spamming attack. Although the plaintiff failed to establish compensable losses, the U.S. District Court for the Southern District of New York did find that the defendant's actions were willful and malicious, and that awarding punitive damages would "discourage him from repeating this behavior" as well as "deter other computer hackers from initiating similar denial-of-service attacks."¹⁷ The court awarded the plaintiff \$1 in nominal damages, and relied upon *State Farm* for the proposition that a higher ratio of punitive to compensatory damages may be awarded where an act results in small economic damages. The court then recommended that punitive damages not exceed \$10,000.

Successive Punitive Awards

An open issue is whether the decision in *State Farm* applies to limit successive punitive damage awards. In *Simon II Litigation v. Philip Morris USA Inc.*,¹⁸ a class action by cigarette smokers against tobacco companies, the Second Circuit explained the concern: "For the potential plaintiff, piecemeal individual actions or successive class actions for punitive damages would operate to his disadvantage if punitive awards in earlier-filed suits subtract from the constitutional total and thereby reduce or preclude punitive damages for future claimants For defendants, piecemeal individual or successive class actions would pose a threat of excessive punishment in violation of their due process rights if successive juries assess awards that exceed the limit of what is necessary for deterrence and retribution." The Second Circuit did not resolve the issue, and it is likely to be the subject of future litigation.

Conclusion

Courts in New York have been faithful to the principles of *State Farm* and have heeded the Supreme Court's "concern about punitive damages that 'run wild.'"¹⁹ The New York courts' application of the single-digit ratio set forth in *State Farm* has arguably obviated the need for legislation limiting punitive damage awards.

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Endnotes:

1. 538 US 408 (2003) [hereinafter *State Farm*].
2. 517 US 559 (1996).
3. *State Farm*, 538 US at 425.
4. 280 FSupp2d 145 (SDNY 2003).
5. *Id.* at 159.
6. 388 F3d 39 (2d Cir. 2004), cert. denied, 125 SCt 2270 (2005).
7. *Id.* at 63.

8. No. 603967-00, 2005 N.Y. Misc. LEXIS 755 (Sup. Ct. N.Y. County March 24, 2005).
9. No. 120577/00, 2004 WL 51604 (Sup. Ct. N.Y. County Jan. 6, 2004).
10. Id. at *5.
11. 343 F3d 172 (2d Cir. 2003).
12. Id. at 187 (quoting *Lee v. Edwards*, 101 F3d 805, 811 (2d Cir. 1996)).
13. Id.
14. 387 F3d 109, 126 (2d Cir. 2004).
15. Id.
16. No. 01 Civ. 3856 (RCC) (DF), 2003 U.S. Dist. LEXIS 25136 (SDNY Aug. 29, 2003).
17. Id. at *12.
18. 407 F3d 125, 134-35 (2d Cir. 2005).
19. *Pacific Mut. Life Ins. Co., v. Haslip*, 499 US 1, 18 (1991).

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