

Proper Brandt Fees Usage to Calculate Punitive Damages in California Bad Faith Cases

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Summary: Stonebridge Life provided hospital indemnity coverage to Nickerson who was hospitalized for 109 days after a severe leg fracture. The trial court directed a verdict for Nickerson on the breach of contract claim, entered judgment on the jury verdict for breach of the implied covenant of good faith and fair dealing, and imposed a \$19,000,000 punitive damages award. The parties stipulated to attorneys' fees (*Brandt* fees) of \$12,500 to be imposed by the trial court post-verdict. The trial court reduced the punitive damages award to \$350,000, 10 times the compensatory damages, but did not include the *Brandt* fees in that calculation. The California Supreme Court reversed and found the *Brandt* fees were incurred to recover the insurance benefits so were properly a component of compensatory damages. Accordingly, they were properly included when calculating the ratio of punitive to compensatory damages to determine whether the punitive damages award satisfied due process.

Nickerson v Stonebridge Life Ins Co

The jury's award of \$19,000,000 obviously exceeded the due process limitations discussed in several United States Supreme Court decisions, including *BMW of North America v. Gore*, *State Farm Mutual Automobile Insurance Company v. Campbell*, *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, and *Pacific Mutual Life Insurance Company v. Haslip*, and the California Supreme Court opinion in *Simon v. San Paolo U.S. Holding Company, Inc.*

The court in *Nickerson* noted that a series of United States Supreme Court cases had resulted in the adoption of three guideposts used to determine constitutional limitations on punitive damages awards known as the *Gore* factors. In fact, the Court in *Campbell*, relying on *Gore*, concluded, “[i]n practice, few awards exceeding any single digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 425 (2003). The California Supreme Court concluded in *Simon v. San Paolo U.S., Holding Company, Inc.*, 35 Cal. 4th 1159, 1182, 113 P.3d 63, that in California “ratios between the punitive damages award and the plaintiff’s actual or potential compensatory damages significantly greater than 9 or 10 to 1 are suspect and, absent special justification..., cannot survive appellate scrutiny under the due process clause.”

The Supreme Court of California in *Brandt v. Superior Court*, 37 Cal.3d 813, 815, 693 P.2d 796 (1985), held whenever an insurance company “withholds policy benefits in bad faith, attorney fees reasonably incurred to compel payment of the benefits are recoverable as an element of the plaintiff’s damages. Accordingly, they are part of the plaintiff’s ‘economic loss—damages—proximately caused by the tort.’” In the *Nickerson* litigation the trial and appellate courts had ruled the *Brandt* fees awarded by stipulation by the trial court after the jury had returned its \$19,000,000 punitive damages verdict “must be excluded from the calculation in determining whether, and to what extent, the jury’s punitive damages award exceeds constitutional limits.” However, the California Supreme Court disagreed. It held when a court is “determining whether a punitive damages award is unconstitutionally excessive, *Brandt* fees may be included in the calculation of the ratio of punitive to compensatory damages, regardless of whether the fees are awarded by the trier of fact as part of its verdict or are determined by the trial court after the verdict has been rendered.”

In arriving at this holding the court reviewed why *Brandt* fees were awarded, what *Brandt* fees are, and concluded that a proper application of the *Gore* factors should not lead to a contrary result. Furthermore, having stipulated to the procedure for determining the compensatory damages awardable to Nickerson, Stonebridge was in a difficult position to argue the *Brandt* fees awarded as part of Nickerson’s compensatory damages should be excluded from the “constitutional calculus merely because they were determined... by the trial court after the jury rendered its punitive damages verdict. On the contrary, to exclude the fees from consideration would be overlooking a substantial and mutually acknowledged component of the insured’s harm.”

The *Nickerson* decision should help California practitioners properly calculate punitive damage awards in California bad faith cases where *Brandt* fees are awardable. The *Nickerson* case is also important to attorneys and carriers in other jurisdictions as persuasive authority for other courts having to determine whether attorneys’ fees awarded in bad faith cases are properly part of the calculation in determining a constitutionally appropriate punitive damages award.

Please click to see update to Brandt Fees.

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