

**PUNITIVE DAMAGES AFTER  
STATE FARM v. CAMPBELL:  
THE FIRST YEAR**

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**I. Background**

Eight years ago the United States Supreme Court invalidated a state-court punitive damages award on Fourteenth Amendment grounds for the first time. *BMW of North America v. Gore*, 517 U.S. 559 (1996). In *Gore*, the Court instructed lower courts reviewing punitive damages awards to consider three “guideposts”:

- (1) the degree of reprehensibility of the defendant’s misconduct (described as the most important guidepost);
- (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages awarded; and
- (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases.

517 U.S. 559, 575 (1996). These guideposts were most recently applied by the Supreme Court in *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

In *Campbell*, State Farm was hammered by a Utah jury for bad faith claims handling practices arising out of a tragic three car collision. The jury found State Farm’s conduct was

so reprehensible that they awarded \$145 million in punitive damages in addition to \$2.4 million in compensatory damages. While the trial judge remitted the compensatory damages to \$1 million and the punitive damages to \$25 million, *Campbell v. State Farm Mutual Automobile Insurance Company*, 2004 UT 34, \*3, 2004 Utah LEXIS 62, \*\*3 (Apr. 23, 2004), the Utah Supreme Court reinstated the \$145 million punitive damages award, in part relying on evidence introduced at the trial that proved that State Farm had engaged in a nationwide practice of unfairly minimizing claims in bad faith. *Campbell v. State Farm Mutual Automobile Insurance Company*, 2001 UT 89, 65 P.3d 1134 (2001). The United States Supreme Court granted a *writ of certiorari* and reversed, finding that the \$145 million punitive damages award violated the Fourteenth Amendment.

Acknowledging the reprehensible conduct committed by State Farm, the Supreme Court ruled that only the conduct that led to the plaintiff's individual damages could be considered, not State Farm's alleged nationwide bad faith practices. 538 U.S. at 421-23. The Supreme Court took a dim view of a state applying its punitive damages laws to punish a defendant for conduct occurring in some other state, explaining that as a general rule:

[States do not have] a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction. Any proper adjudication of conduct that occurred outside Utah to other persons would require their inclusion, and, to those parties, the Utah courts, in the usual case, would need to apply the laws of their relevant jurisdiction.

538 U.S. at 421-22.

Concerning the maximum ratio of allowable punitive to compensatory damages, the Court refused to “impose a bright line ratio,” explaining instead that there is:

A long legislative history, dating back over 700 years and going forward to today, providing for double, treble, or quadruple damages to deter and punish. (Citation omitted). While these ratios are not binding, they are instructive. They demonstrate what should be obvious: **Single-digit multipliers are more likely to comport with due process**, while still achieving the State’s goals of deterrence and retribution . . . .

538 U.S. at 425 (emphasis added).

The Court made clear that “ratios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages” and “that a higher ratio *might* be necessary where the injury is hard to detect or the monetary value of non-economic harm might have been difficult to determine.” 538 U.S. at 425. On the other hand, the Court also explained that when compensatory damages are substantial (as in *Campbell*, where one million dollars in compensatory damages was allowed for the emotional distress of facing the possibility of financial ruin), “then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *Id.* The overarching principle is that the “precise award in any case, of course, must be based upon the facts and circumstances of

the defendant's conduct and the harm to the plaintiff." 538 U.S. at 424-25.

## II. Punitive Damages Cases Since *State Farm v. Campbell*

In the wake of *State Farm Mutual Auto Insurance Co. v. Campbell*, courts have had a busy year reviewing state punitive damages awards to determine if they comply with the due process requirements of the Fourteenth Amendment to the United States Constitution. More than forty opinions have been published. Many of these opinions are briefly summarized in the attached table, *Sample of Court Reviewed Punitive Damages Cases Since the United States Supreme Court Decided State Farm v. Campbell*.

The table reveals that:

- More than half of the awards, after modifications on review, resulted in single digit (or near single digit) ratios of punitive to compensatory damages.
- In the highest court-reviewed award, *In re: Exxon Valdez*, 296 F. Supp. 2d 1071 (D. Alas., Jan. 28, 2004), a staggering \$4.5 billion in punitive damages was allowed, nine times the court calculated compensatory damages. This award was more than forty times higher than the next runner up at \$108.5 million. *Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists, et al.*, 300 F. Supp. 2d 1055 (D. Or. Jan.

28, 2004). The punitive damages in the *Exxon Valdez* case were reduced from \$5 billion as a result of post-*Campbell* review. The case is currently on appeal and pending in the United States Court of Appeals for the Ninth Circuit. It is also a prime candidate for a future review by the Supreme Court of the United States.

- In approximately 25 percent of the sampled cases since *State Farm*, courts have upheld punitive to compensatory damages ratios that were much higher than “single-digit” ratios. These cases seem to fall into two distinct categories: 1) cases involving one dollar nominal compensatory damages; and 2) cases involving particularly reprehensible conduct.
- The resulting punitive damages in the nominal compensatory damages cases have not been high, and there seems to be a general consensus in the lower courts that the ratio aspect of the *Gore/Campbell* analysis does not apply. *E.g. Sherman v. Kasotakis*, 2004 U.S. Dist. Lexis 6743 (N.D. Iowa, Apr. 19, 2004); *Williams v. Kaufman County*, 352 F.3d 994 (5th Cir. 2003); *Tate v. Dragovich*, 2003 U.S. Dist. LEXIS 14353 (E.D.Pa. Aug. 15, 2003).

- In two cases, both involving particularly reprehensible intentional misconduct, *Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists, et al.*, 300 F. Supp. 2d 1055 (D. Or. Jan. 28, 2004) and *Southern Union Company v. Southwest Gas Corporation*, 281 F. Supp. 2d 1090 (D. Az. Aug. 1, 2003), large punitive damages awards with very high punitive to compensatory damages ratios were upheld. In *Planned Parenthood* the amount awarded, as previously mentioned, was \$108.5 million in punitive damages, which was 206 times the amount of the compensatory damages. In *Southwest Gas*, the amount awarded was \$60 million in punitive damages, which was 154 times the amount of the compensatory damages allowed.

In the aftermath of *State Farm v. Campbell*, a States rights debate rages, although some of this debate requires reading between the lines. An example is the recent decision by the Supreme Court of Utah in *Campbell v. State Farm Mutual Automobile Insurance Company*, 2004 UT 34, \*3, 2004 Utah LEXIS 62, \*\*3 (Apr. 23, 2004), where it reviewed the punitive damages award in *State Farm v. Campbell* after the Supreme Court of the United States remanded the case. State Farm argued that it was the Utah Supreme Court's "duty in the face of a remand order" to deliver "unwavering fidelity to the letter and spirit of the mandate," and that "the letter and spirit of the mandate erect[ed] an impenetrable ceiling on the

punitive damages award . . . based on a 1 to1 ratio of punitive damages to compensatory damages.” 2004 UT 24, \*5. The Utah Supreme Court rejected this argument, instead remitting the punitive damages award to \$9 million, obviously the highest “single-digit-ratio” possible. In reaching this conclusion, the Utah Supreme Court artfully disagreed with the United States Supreme Court on just about every proposition of Utah law that the United States Supreme Court ventured into. The undertone suggests a strong commitment to States’ rights, and minimal compliance with federal meddling into an area of the law traditionally occupied by the States.

While various courts have been applying the same *Gore/Campbell* standards of *de novo* review and the guideposts, widely divergent results have been reached. Large punitive damages awards have been variously upheld, reduced and taken away.

It is apparent that punitive damages will continue to be a major factor affecting civil litigation, including aviation litigation, for many years to come.

**SAMPLE OF COURT REVIEWED PUNITIVE  
DAMAGES CASES SINCE THE UNITED STATES SUPREME COURT  
DECIDED *STATE FARM v. CAMPBELL*  
by David E. Rapoport**

<b>CASE</b>	<b>ORIGINAL PUNITIVE DAMAGES AWARD</b>	<b>RESULT OF JUDICIAL REVIEW AFTER <i>STATE FARM v. CAMPBELL</i></b>
<i>In re Exxon Valdez</i> , 296 F. Supp. 2d 1071 (D. Alas., Jan. 28, 2004).	\$286,787,739.22 in compensatory damages; \$5 billion in punitive damages.	Punitive damages remitted to \$4.5 billion, the Court noting that the total compensatory damages, including the amount of the verdict, the amounts of settlements and other factors was \$513,147,740. 9:1 ratio.
<i>Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists, et al.</i> , 300 F. Supp. 2d 1055 (D. Or. Jan. 28, 2004).	\$526,336 in compensatory damages; \$108.5 million in punitive damages; The punitive damages awards were made against twelve individuals and two entities. The awards against individuals ranged from a low of \$3.5 million to a high of \$8 million.	\$108.5 million in punitive damages awards upheld. Approximately 206:1 ratio.
<i>Southern Union Company v. Southwest Gas Corporation</i> , 281 F. Supp. 2d 1090 (D. Az. Aug. 1, 2003).	\$390,072.58 in compensatory damages; \$60 million in punitive damages.	\$60 million in punitive damages upheld. Approximately 154:1 ratio.

<b>CASE</b>	<b>ORIGINAL PUNITIVE DAMAGES AWARD</b>	<b>RESULT OF JUDICIAL REVIEW AFTER STATE FARM v. CAMPBELL</b>
<i>Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.</i> , 345 F.3d 1366 (D.C. Cir. Sept. 29, 2003).	\$15 million in compensatory damages; \$50 million in punitive damages.	\$50 million punitive damage award was upheld. Approximately 3:1 ratio.
<i>TVT Records, et al. v. The Island Def Jam Music Group, et al.</i> , 279 F. Supp. 2d 413 (S.D.N.Y. Sept. 2, 2003).	Approximately \$48 million in compensation damages; approximately \$108 million in punitive damages.	Punitive damages remitted to \$29.125 million. Approximately 6:1 ratio.
<i>Union Pacific R.R. v. Barber</i> , 2004 Ark. LEXIS 128 (Ark. Feb. 26, 2004).	\$5.1 million in compensatory damages; \$25 million in punitive damages.	\$25 million in punitive damages affirmed. Approximately 5:1 ratio.
<i>Romo v. Ford Motor Company</i> , 113 Cal. App. 4th 738, 6 Cal. Rptr. 3d 793 (5th Dist. Nov. 25, 2003).	\$5million in compensatory damages; \$290million in punitive damages.	Punitive damages were remitted to \$23,723,287. Approximately 5:1 ratio.
<i>Bogle v. McClure</i> , 332 F.3d 1347 (11th Cir. June 6, 2003).	\$3.5 million in compensatory damages; \$13.3 million in punitive damages.	\$13.3 million punitive damage award upheld. Approximately 4:1 ratio.
<i>Campbell v. State Farm Mutual Automobile Insurance Company</i> , 2004 UT 34, 2004 Utah LEXIS 62 (Apr. 23, 2004).	\$1 million in compensatory damages; \$145 million in punitive damages.	Punitive damages were remitted to \$9 million . Approximately 9:1 ratio.
<i>Henley v. Philip Morris, Inc.</i> , 114 Cal. App. 4th 1429, 9 Cal. Rptr. 3d 29 (1st Dist.	\$1.5 million in compensatory damages; \$50 million in punitive	Punitive damages were further remitted to \$9 million. 6:1 ratio.

CASE	ORIGINAL PUNITIVE DAMAGES AWARD	RESULT OF JUDICIAL REVIEW AFTER STATE <i>FARM v. CAMPBELL</i>
Jan. 20, 2004).	damages. Punitive damages award remitted to \$25 million by the trial court.	
<i>Smith v. Fairfax Realty, Inc.</i> , 2003 UT 41, P. 3d 1064 (Oct. 3, 2003).	\$1.1 million in compensatory damages; \$5.5 million in punitive damages.	Compensatory damages remitted to \$1,007,221; \$5.5 million in punitive damages upheld. 5.5:1 ratio.
<i>Bocci v. Key Pharmaceuticals, Inc.</i> , 189 Ore. App. 349, 76 P.2d 669 (Sept. 10, 2003), <i>mod.</i> , 190 Ore. App. 407, 79 P.3d 908 (Nov. 13, 2003).	\$6,121,648 in compensatory damages; \$57.5 million in punitive damages.	Punitive damages remitted to \$3.5 million. Less than 1:1 ratio.
<i>Trinity Evangelical Lutheran Church v. Tower Insurance Company</i> , 2003 WI 46, 261 Wis. 2d 333, 661 N.W.2d 789 (May 23, 2003).	\$3.5 million in punitive damages based on a claim of \$490,000 in compensatory damages.	\$3.5 million in punitive damages upheld. Approximately 7:1 ratio.
<i>Suffix, USA, Inc., v. Cook</i> , 128 S.W.3d 838 (Ky. App. Feb. 27, 2004).	\$2.8 million in compensatory damages and \$3 million in punitive damages.	\$3 million in punitive damages affirmed. Approximately 1:1 ratio.
<i>Hollock v. Erie Insurance Exchange</i> , 2004 Pa. Super 13, 842 A.2d 409 (Jan. 22, 2004).	\$278,825 in compensatory damages; \$2.8 million in punitive damages.	\$2.8 million in punitive damages upheld. Approximately 10:1 ratio.

CASE	ORIGINAL PUNITIVE DAMAGES AWARD	RESULT OF JUDICIAL REVIEW AFTER STATE <i>FARM v. CAMPBELL</i>
<i>Austin v. Specialty Transportation Services, Inc.</i> , 2004 S.C. App. LEXIS 86 (Mar. 29, 2004).	\$1,025,000 in compensatory damages; \$2.6 million in punitive damages.	\$2.6 million damages affirmed on appeal. Less than 3:1 ratio.
<i>Zhang v. American Gem Seafoods, Inc.</i> , 339 F.3d 1020 (9th Cir. Aug. 7, 2003), <i>cert den.</i> , 2004 U.S. LEXIS 1855 (U.S., Mar. 8, 2004).	\$360,000 in compensatory damages; \$2.6 million in punitive damages.	\$2.6 million in punitive damages upheld. Approximately 7:1 ratio.
<i>McClain v. Metabolife International, Inc.</i> , 259 F. Supp. 2d 1225(N.D. Ala. 2003).	\$668,500 in compensatory damages awarded to four plaintiffs; \$3.1 million in punitive damages awarded to these same four plaintiffs.	One punitive damages award remitted by \$550,000 to establish a maximum ratio of 9:1, the remaining \$2.5 million in punitive damages were upheld. Less than 4:1 ratio.
<i>Phelps v. Louisville Water Co.</i> , 103 S.W.3d 46 (Ky. Apr. 24, 2003).	\$176,362 in compensatory damages; \$2 million in punitive damages.	\$2 million in punitive damages upheld. Approximately 11:1 ratio.
<i>Simon v. San Paolo U.S. Holding Co., Inc.</i> , 113 Cal. App. 4th 1137, 7 Cal. Rptr. 3d 367 (2d Dist. Dec. 2, 2003), <i>rev granted</i> , 2004 Cal. LEXIS 2548 (Cal. Mar. 24, 2004).	\$5,000 in compensatory damages; \$1.7million in punitive damages.	\$1.7 million punitive damages award upheld. Approximately 340:1 ratio.
<i>Borne v. Haberhill Golf &amp; Country Club</i> ,	\$424,000 in compensatory	\$1.43 million in punitive damages

CASE	ORIGINAL PUNITIVE DAMAGES AWARD	RESULT OF JUDICIAL REVIEW AFTER STATE <i>FARM v. CAMPBELL</i>
<i>Inc.</i> , 58 Mass. App. Ct. 306, 791 N.E.2d 903 (June 13, 2003).	damages; \$1.43 million in punitive damages.	upheld. Less than 4:1 ratio.
<i>Diamond Woodworks, Inc. v. Argonaut Insurance Co.</i> , 109 Cal. App. 4th 1020, 135 Cal. Rptr. 2d 736 (4th Dist. June 13, 2003).	\$658,000 in compensatory damages; \$5.5 million in punitive damages.	Punitive damages remitted to \$1 million. Less than 2:1 ratio.
<i>Fritzmeier v. Krause Gentle Corporation</i> , 2003 S.D. 112, 669 N.W.2d 699 (Sept. 10, 2003).	\$747,115 in compensatory damages; \$995,000 in punitive damages.	\$995,000 in punitive damages upheld. Less than 2:1 ratio.
<i>Bowen &amp; Bowen Construction Co. v. Fowler</i> , 265 Ga. App. 274, 2004 Ga. Ap. LEXIS 2 (Jan. 6, 2004).	\$100,000 in compensatory damages; \$500,000 in punitive damages.	\$500,000 in punitive damages upheld. 5:1 ratio.
<i>Shiv-Ram, Inc. d/b/a Ramada Inn of Anniston v. McCaleb</i> , 2003 Ala. LEXIS 384 (Ala. Dec. 30, 2003).	\$176,573 in compensatory damages; \$500,000 in punitive damages.	\$500,000 in punitive damages affirmed. Approximately 3:1 ratio.
<i>Matthias v. Accor Economy Lodging, Inc.</i> , 347 F.3d 672 (7th Cir. Oct. 21, 2003).	\$10,000 in compensatory damages; \$372,000 in punitive damages.	\$372,000 in punitive damages affirmed. 37:1 ratio.
<i>Jones v. Rent-A-Center, Inc.</i> , 281 F. Supp. 2d 1277 (D. Kan. Aug. 20, 2003).	\$10,000 in compensatory damages; \$1.2 million in punitive damages lowered	\$290,000 in punitive damages upheld. 29:1 ratio.

CASE	ORIGINAL PUNITIVE DAMAGES AWARD	RESULT OF JUDICIAL REVIEW AFTER STATE <i>FARM v. CAMPBELL</i>
	based on statutory cap to \$290,000.	
<i>Craig v. Holsey</i> , 264 Ga. App. 344, 590 S.E.2d 742 (Nov. 25, 2003).	\$8,801 in compensatory damages; \$200,000 in punitive damages.	\$200,000 in punitive damages upheld. 22:1 ratio.
<i>Reatta Resources, Inc. v. Wayne Craft</i> , 204 Tex. App. LEXIS 2193 (5th Dist. Mar. 9, 2004).	\$6,000 in compensatory damages; \$200,000 in punitive damages.	\$200,000 in punitive damages affirmed. 25:1 ratio.
<i>The Willow Inn, Inc. v. Public Service Mutual Insurance Company</i> , 2003 U.S. Dist. LEXIS 9558 (E.D. Pa. July 21, 2003).	\$2,000 in compensatory damages; \$150,000 in punitive damages.	\$150,000 in punitive damages upheld. 75:1 ratio.
<i>Jones v. Sheahan</i> , 2003 U.S. Dist. LEXIS 19804 (N. Dist. Ill. Nov. 3, 2003).	\$25,000 in compensatory damages; \$750,000 in punitive damages against two individuals.	\$750,000 in punitive damages remitted to \$150,000. 6:1 ratio.
<i>Disorbo v. Hoy</i> , 343 F. 3d 172 (2d Cir. Aug. 29, 2003).	\$400,000 in compensatory damages; \$1.275 million in punitive damages.	Compensatory damages remitted to \$250,000; punitive damages remitted to \$75,000. Less than 1:1 ratio.
<i>Harrelson v. RJ</i> , 2003 Ala. LEXIS 339 (Ala. November 7, 2003).	\$15,000 in compensatory damages; \$75,000 in punitive damages.	\$75,000 in punitive damages awards upheld. 5:1 ratio.
<i>Lincoln v. Case</i> , 340	\$500 in	Punitive damages

CASE	ORIGINAL PUNITIVE DAMAGES AWARD	RESULT OF JUDICIAL REVIEW AFTER STATE <i>FARM v. CAMPBELL</i>
F.3d 283 (5th Cir. Aug. 7, 2003).	compensatory damages; \$100,000 in punitive damages.	award remitted to \$55,000. 110:1 ratio.
<i>Sherman v. Kasotakis</i> , 2004 U.S. Dist Lexis 6743 (N.D. Iowa, Apr. 19, 2004).	\$12,500 awarded to each of four individuals who had received a nominal award of \$1 in compensatory damages each.	No due process violation in awarding \$12,500 per person in punitive damages. 12,500:1 ratio.
<i>Stack v. Jaffee</i> , 306 F. Supp. 2d 137 (D. Conn. July 30, 2003).	\$2,000 in compensatory damages; \$200,000 in punitive damages.	\$200,000 punitive damages award remitted to \$25,000. Less than 13:1 ratio.
<i>Williams v. Kaufman County</i> , 352 F.3d 994 (5th Cir. 2003).	Nominal compensatory damages; \$15,000 in punitive damages.	\$15,000 in punitive damages upheld. 15,000:1 ratio.
<i>Tate v. Dragovich</i> , 2003 U.S. Dist. LEXIS 14353 (E.D.Pa. Aug. 15, 2003).	\$1 in nominal compensatory damages; \$10,000 in punitive damages.	\$10,000 in punitive damages upheld. 10,000:1 ratio.
<i>Liggett Group, Inc., et al. v. Engle</i> , 853 S.2d 434 (Fla. App. May 21, 2003).	\$12.7 million in favor of three plaintiffs in a nationwide class action; \$145 billion in punitive damages awarded to the entire class.	\$145 billion punitive damages award vacated as violative of due process. Case remanded with instruction to decertify the nationwide class action, compensatory damages awards reversed on other grounds.
<i>Roth v. Farner-Bocken Company</i> ,	\$25,000 in compensatory	Punitive damages award vacated, case

<b>CASE</b>	<b>ORIGINAL PUNITIVE DAMAGES AWARD</b>	<b>RESULT OF JUDICIAL REVIEW AFTER STATE <i>FARM v. CAMPBELL</i></b>
2003 S.D. 80, 667 N.W. 2d 651 (July 16, 2003).	damages; \$500,000 in punitive damages.	remanded for a new trial on punitive damages.