

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-019991

08/05/2009

HONORABLE A. CRAIG BLAKEY II

CLERK OF THE COURT
J. Rutledge
Deputy

KENNETH JOHN NARDELLI, et al.

RICHARD A DILLENBURG

v.

METLIFE AUTO AND HOME INSURANCE
AGENCY INC, et al.

TIMOTHY M STRONG

RULING

This matter has been under advisement on Defendants' Motion for Reduction of Punitive Damages Award as a Matter of Law. Having the considered the parties' memoranda and the oral arguments of counsel, the Court issues the following ruling.

Defendants contend that the jury's punitive damage award is unconstitutionally excessive. The parties agree that there are three considerations when reviewing punitive damages:

- (1) "The degree of reprehensibility of the Defendant's misconduct;"
- (2) "The ratio between compensatory and punitive damages;"
- (3) "How the award compares with other penalties."

Hudgins vs. Southwest Airlines Co., 547 Ariz. Adv. Rep. 5, at ¶ 51, 2009 W.L. 73251 (App. Jan. 13, 2009), *citing* BMW of North America, Inc. vs. Gore, 517 U.S. 559, 575 (1996).

(1) Reprehensibility.

Defendants argue that its conduct was insufficiently reprehensible to justify the jury's award. In determining the reprehensibility of Defendants' misconduct, the Court considers the following factors:

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- (A) Whether there was physical as opposed to economic harm;
- (B) Whether the misconduct displayed an indifference or reckless disregard to others' health or safety;
- (C) Whether there was evidence of financial vulnerability;
- (D) Whether the misconduct was an isolated incident; and
- (E) Whether the harm inflicted was an accidental result or involved intentional malice, trickery or deceit.

Hudgins, 547 Adv. Rep. at ¶ 52, *citing* State Farm Mutual Auto. Ins. Co. vs. Campbell, 538 U.S. 408 at 419 (2003). The most important factor in considering the reasonableness of a punitive damage award is the degree of reprehensibility of the Defendants' misconduct. Hudgins at ¶ 52, *citing* Gore, 517 U.S. at 575.

The Court finds that the Plaintiffs did not suffer physical harm because of Defendants' conduct. While Mr. Nardelli proved that he suffered an exacerbation of his pre-existing psychological condition, the Plaintiffs concede that the jury took this into account in awarding compensatory damages.

The Court further finds that Defendants were unaware of Plaintiff's pre-existing psychological state, and the fact that Mr. Nardelli occasionally appeared distraught is not enough to suggest that the Defendants evinced an indifference to, or reckless disregard for, his health.

The Court further finds that while Defendants' conduct may have caused Plaintiffs some financial stress, the Plaintiffs were not particularly vulnerable as a result of Defendants' behavior.

As to whether or not Defendants' conduct involved repeated actions or was merely an isolated incident, there was little or no evidence that Metlife systematically engaged in similar acts. However, there was substantial evidence regarding the amount of Defendants' stated profit goal and the participation of the claim department in meeting that goal. When coupled with the argument that Defendants' conduct in handling Plaintiffs' claim was born out of the plan to maximize profits, it is clear that the jury tied its punitive damage award to the amount of Defendants' desired profit. While it is permissible for a company to implement an aggressive plan to increase profits, it is also responsible for the foreseeable risks in carrying out such a plan. Indeed, Defendants produced little evidence that it made reasonable mitigation efforts to prevent the type of conduct that occurred in this case.

There was also substantial evidence for the jury to conclude that Plaintiffs' harm was not the result of mere accident. By concealing the V-550 Endorsement and the possible applicability

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of the appraisal provision in Plaintiffs' Policy, the jury reasonably concluded that Defendants engaged in deceitful behavior. Accordingly, the Court finds that Defendants' affirmative acts of deceit, followed by their desire to put profits over the fiduciary duty they owed their insureds, fall in the lower to middle range of the reprehensibility scale set forth in Hudgins.

(2) Ratio Between Compensatory and Punitive Damages.

In determining the reasonableness of the ratio between the punitive and compensatory damages, the Court is mindful of the Court decisions in Exxon Shipping Co. vs. Baker, 128 U.S. 2605 (2008) and Linthicum vs. Nationwide Life Insurance, 150 Ariz. 326 (1986), as well as the Campbell, Gore, and Hudgins opinions referenced above. Here, the Defendants contend that the 355:1 Ratio of punitive to compensatory damages is unconstitutionally high. Plaintiffs argue that the Court should be careful not to overly emphasize the ratio analysis or else the purpose of punitive damages will be meaningless.

The Court finds that the compensatory damages award is substantial, clearly covering the Plaintiffs' economic losses of approximately \$35,000.00 and the temporary exacerbation of Mr. Nardelli's psychological condition. Nonetheless, the Court finds that Defendants' wealth warrants a substantial punitive damages award in order to serve the deterrent purposes of such an award.

(3) Comparative Penalties.

The Court finds that Plaintiffs' contention that Defendants' conduct could have resulted in severe civil penalties is a minor factor in the analysis. Indeed, as pointed out by the Plaintiffs, the guidepost of comparable penalties is likely irrelevant because the violation of common law tort duties is difficult to compare to the speculative nature of potential statutory penalties. *See Security Agency Title Inc. vs. Pope*, 219 Ariz. 480 (App. 2008). Accordingly, the Court finds that this factor is of no consequence to the case at bar.

Taking into account the considerations/factors set forth above, the Court finds that the ratio between the compensatory and punitive damages to be unconstitutionally excessive. However, the 1:1 ratio suggested by the Defendants is inappropriate and the Court believes that the ratio of 4:1 is consistent with the Court's findings. Accordingly,

IT IS ORDERED that the punitive damages award against the Defendants be and hereby is reduced from \$55,000,000.00 to \$620,000.00.

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The Court is in receipt of and has considered Plaintiffs' Amended Statement of Costs; Notice of Taxation of Costs; and Application for Rule 68 Sanctions, and the parties' relevant memoranda thereto.

With respect to Plaintiffs' Statement of Costs as set forth in Exhibit 1 to Plaintiff's Reply to Defendant's Objection to Plaintiff's Statement of Costs,

Defendants' objections to costs already paid pursuant to the Court of Appeals' action and travel costs previously paid as court-imposed sanctions are sustained. Similarly, the Court sustains Defendants' objection to Robert DeLong's witness payment of \$116.67, said witness fee to be reduced to \$18.00.

Defendants' objections to the costs of pretrial hearings and trial are overruled.

Defendants' objection to the costs for transcribing DVDs and other materials in the amount of \$2,963.95 is granted.

Defendants' objection to the costs for videotaped depositions is overruled.

Defendants' objection regarding the compensation of the discovery master is overruled. However, Plaintiffs must provide Defendants with invoices that establish the fees paid to the discovery master.

Defendants' objections outlined in section "F" of their memorandum are granted.

Defendants' objection to Plaintiffs' deposition travel expenses is granted.

With respect to Plaintiffs' Application for Rule 68 Sanctions, the Court has considered the parties' memoranda. The Court finds that the offer of judgment is not invalid and, accordingly, grants the Application. However, the Court concurs with the Defendants that the offerors must establish that their expert witness fees are "reasonable" and recalculate the pre-judgment interest based on the amount of the offer of judgment. Similarly, Plaintiffs shall delete any redundant costs as noted by the Defendants in their responsive memoranda.

Finally, the Court is in receipt of and has considered Plaintiffs' Motion and Application for Attorneys' Fees and the memoranda pertinent thereto.

IT IS ORDERED granting Plaintiffs' Motion. However, the Application does not set forth whether or not the billing entries are contemporaneous time records or something prepared after the fact. The Court is also concerned that Plaintiffs' counsel doubled billed for some

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services (e.g. *see* February 9, 2007 entries for Richard Dillenburg and Steven Dawson).
Accordingly,

IT IS ORDERED that (1) Plaintiffs' counsel provide Defendants and this Court with an explanation as to type of fee arrangement they have with the Plaintiffs and (2) whether or not the time entries set forth in the Application are contemporaneous with the dates involved or prepared at some point thereafter.

IT IS FURTHER ORDERED that Defendants shall prepare an analysis of which time entries they believe to be duplicative and/or unnecessary.