New Guideposts for Punitive Damages in California: A Significant Roadblock for Massive Jury Awards?

By John P. Phillips and Peter C. Meier

Two recent California appellate court decisions have reshaped the landscape for punitive damage awards in tort actions. The decision in Romo v. Ford Motor Company, No. F034241 (Cal. Ct. App. Nov. 25, 2003), holds that punitive damages may be awarded only in relation to the harm suffered by the individual plaintiffs in the case at hand, not as an actual deterrence of a broad course of conduct. Applying this “narrow view” of the purpose of punitive damages, the court reduced what had been the largest judgment ever upheld by a California appellate court from $290 million to about $23.7 million. Observers agree that the ruling could dramatically reduce most multi-million-dollar punitive awards in the state, by requiring that punitive damages not exceed “single-digit multipliers” over compensatory damages in most cases.

Just a few days later, the California Court of Appeal issued its decision in Simon v. San Paolo U.S. Holding Company, Inc., No. B121917 (Cal. Ct. App. Dec. 2, 2003), upholding a punitive damages award of $1.7 million where the compensatory damage award was only $5,000. Although the two cases do not directly conflict, Simon tempers the result in Romo, indicating that California courts may continue to uphold punitive damage awards many times larger than compensatory damages under some circumstances.

Romo v. Ford Motor Company: Limiting Punitives to the Harm at Hand

In practical terms, the decision in Romo would mean that in most cases, punitive damages awards will be limited to single-digit multipliers – for example double, treble, or quadruple the amount of compensatory damages. Awards such as that rendered by the jury in Romo, in which the punitive award ($290 million) was 58-times higher than the amount of compensatory damages awarded ($5 million), would no longer be possible. In light of the significant impact of this decision on tort litigation in the state, the plaintiffs are expected to request review by the California Supreme Court.

At issue in Romo was Ford Motor Company’s design of the roof of its 1978-1979 Ford Broncos. The plaintiffs brought personal injury and wrongful death actions stemming from a rollover accident in which the steel portion of a Bronco roof collapsed and a fiberglass portion shattered. Evidence at trial showed that Ford had ignored its own internal safety standards in designing the roof, which lacked an integral roll-bar, and did not test the strength of the roof before placing it in production. Romo, at 18.

The turnabout in Romo resulted from intervention by the United States Supreme Court, which granted the defendants’ petition for writ of certiorari in May 2003, vacating the judgment and remanding the case to the California Court of Appeal for further consideration in light of the decision in State Farm Mutual Automobile Insurance Company v. Campbell, 123 S. Ct. 1513 (2003). In State Farm, the Supreme Court held that an award of $145 million in punitive damages against an insurer for alleged bad-faith failure to settle within policy limits violated due process where the amount awarded in compensatory damages was only $1 million.

The Supreme Court in State Farm held that the degree of punishment and deterrence that can be exacted through state law punitive damages is subject to constitutional due process limits under the Fourteenth Amendment. Id. at 1517. On remand, the appellate court in Romo found that the Supreme Court in its State Farm decision had
“articulated a constitutional due process limitation on both the goal and the measure of punitive damages.” As a result, punitive damages analysis must focus “primarily on what defendant did to the present plaintiff, rather than the defendant’s wealth or general incorrigibility.” Romo, at 10.

Therefore, the Supreme Court in State Farm held that due process does not permit courts, in the calculation of punitive damages, to evaluate the merits of other parties’ hypothetical claims against a defendant. “A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business.” State Farm, 123 S. Ct. at 1523. The Romo court determined that this limitation means that in awarding punitive damages, “it is not a permissible goal to punish a defendant for everything else it may have done wrong.” Romo, at 11.

Applying State Farm, the court in Romo determined that the jury had been “fundamentally misinstructed concerning the amount of punitive damages it could award in the present case.” Id. at 15. The court noted that the jury was instructed that, in addition to other factors, it should consider in arriving at an award of punitive damages “[t]he amount of punitive damages which will have a deterrent effect on the defendant in light of the defendant’s financial condition.” Id. at 16. This focus in the jury instruction on “actual” deterrence of the defendant “fails to restrict the jury to punishment and deterrence based solely on the harm to the plaintiffs....”

The Romo court took note that the plaintiffs’ counsel had argued to the jury that their punitive award should be large enough to force Ford to recall all remaining 1978-1979 Broncos still on the road and “crush them to dust.” Plaintiffs’ counsel had argued that $1 billion was the appropriate award amount, based on the current value of the profits Ford made on all 1978-1979 Broncos, and so that the resulting publicity would reach all remaining Bronco owners “so they would know how dangerous the vehicle was.” The court found these considerations impermissible under State Farm. Id. at 16 n.7.

In reducing the amount of the award to $23.7 million, the court decided that an award of three times the compensatory damages for the personal injury plaintiffs, amounting to $13.7 million, “would not be constitutionally unreasonable.” The court determined another $10 million in punitive damages was appropriate for the wrongful death actions. In an important caveat, the court noted that wrongful death actions present special considerations so that a single-digit multiplier “does not necessarily form an appropriate limitation upon a punitive damages award.” Romo, at 26. In other words, because pain and suffering damages are not available in wrongful death actions, strict adherence to single digit-multiplicators might result in a calculation that it is “less expensive for a defendant’s malicious conduct to kill rather than injure a victim.”


Days after Romo was issued, another California appellate court addressed in more detail the tension between punitive damages multipliers and due process rights. In Simon, the court of appeal found that awards that exceed single-digit multipliers will not always violate due process. In Simon, the plaintiff sued the defendants for fraud, alleging they falsely promised to sell real property to him under terms and conditions they later backed out of in order to sell to another purchaser. The jury awarded the plaintiff only $5,000 for his out-of-pocket expense. After retrial of issue of punitive damages, a second jury awarded the plaintiff $1.7 million in punitives. The court of appeal held that even though this award was 340 times larger than the compensatory award, it did not violate due process.

The Simon court noted that large punitive damage award ratios may be allowable 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 the noneconomic harm might have been difficult to determine.” Simon at 25. Although the out-of-pocket damages awarded to the plaintiff were only $5,000, the appeals court noted that the plaintiff’s lost opportunity from real estate transaction was at least $400,000. The court presumed the jury considered this to be the actual loss to the plaintiff, and noted that the ratio of punitive damages to that loss was just over 4 to 1. Simon, at 28.

The court reasoned that State Farm’s suggested ratios are not intended to limit the reviewing court to a comparison of punitives to an award of out-of-pocket expenses “that does not reflect the full effect of the defendant’s conduct upon the plaintiff, particularly where the resulting punitive-damage award would not result in an amount that would further the California public policy of punishing the defendant and making an example, in order to discourage him and others from perpetrating fraud in the future.” Id. at 29.

Looking Down the Road

The impact of Romo and Simon will be felt immediately in the state’s courthouses if the California Supreme Court does not grant review of either case. Romo means that in cases where the jury has made a large compensatory award, any failure
by the jury to reasonably limit an award of punitive damages to the specific harm to the plaintiff will expose the award to post-verdict reduction by the trial court. *Simon*, however, shows that where compensatory damages are small, but the defendants’ actions are particularly egregious, a massively disproportionate punitive damage award may yet withstand scrutiny. (For an example outside California law: a federal appeals court recently upheld punitive damages of $186,000 for plaintiffs who suffered bites from bedbugs - and only $5,000 in compensatory damages -- at the defendants’ motel. The defendants knew the motel rooms were infested, but consistently rented the rooms to travelers anyway. *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003)).

After *Romo* and *Simon*, there are new considerations for litigants in proposing punitive damage instructions. For example, the new California punitive damages jury instruction (California Jury Instruction CACI 3940) adopted earlier this year might require modification in some actions. The instruction includes language allowing the jury to determine, in view of the defendant’s financial condition, “what amount is necessary to punish [him/her] and discourage future wrongful conduct.” *Romo* holds that while a defendant’s wealth may still be considered by the jury, it must not be a “gauge for the imposition of a penalty that will actually deter the entire type or course of conduct that affected these plaintiffs.” *Id.* at 16. On the other hand, CACI 3940 already requires that there be a “reasonable relationship between the amount of punitive damages and [the plaintiff’s] harm.” The “reasonable relationship” of particular jury awards to particular harms will no doubt remain in the eye of beholder.

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