On April 7, in the case of State Farm v. Campbell, the U.S. Supreme Court issued a decision that provoked a long sigh of relief from corporate America. It reversed a Utah punitive damage award of $145 million against State Farm Automobile Insurance Co.. The Supreme Court also ordered the Utah courts to recalculate the award in a way that did not offend the Fourteenth Amendment's Due Process Clause.

This decision is significant not only for what it says, but also for how it says it. The U.S. Supreme Court is saying to the state courts, in the words of one of my colleagues who follows the tort wars carefully, "you guys don't get it; now we're going to spell it out for you in black and white."

But what message, exactly, is the Supreme Court sending the state courts? That is what I will discuss in this column.

The Facts and Prior Proceedings in Campbell

The case arose when Curtis Campbell (now deceased) and his wife, Inez Preece Campbell, sued their insurer, State Farm. They alleged that State Farm, in handling a suit against Curtis Campbell in bad faith, intentionally inflicted emotional distress upon them.

Briefly, Curtis Campbell had been involved in a car accident that killed one person, whose family sued Campbell, and injured another man, who also sued Campbell. State Farm refused to settle the case for $50,000, Campbell's policy limit - even though the evidence suggests that it knew he was at fault for the accident and he would do poorly at trial.

And indeed, Curtis Campbell was found liable for the injuries he caused in the car accident, and the damages were assessed at $136,000. State Farm offered to pay $50,000 of the judgment, and suggested that the Campbells sell their home to make up the difference.

Eventually State Farm changed its mind and paid all of the $136,000, but it took a year and a half to offer to do so. In the interim, the Campbells say, they suffered emotional distress, as a result of State Farm’s refusing to take the lawsuit against Curtis Campbell seriously, and refusing the $50,000 pre-trial settlement offer.

Based on these allegations, the Campbells sued and won a huge judgment against State Farm. They won $2.6 million in compensatory damages (which the trial judge reduced to $1 million) and $145 million in punitive damages.

The Utah Supreme Court upheld the awards. State Farm then sought U.S. Supreme Court review, and the Court took the case.
The Court's Decision: Due Process Requires Low Punitive/Compensatory Ratios

In a 6-3 decision, the Supreme Court held in State Farm's favor. Justice Anthony Kennedy wrote a stinging opinion on behalf of the majority - an opinion that was greeted with glee by the defense bar whose goal in many tort cases is to keep punitive damages to a minimum.

Among other points, Kennedy asserted that it should be "obvious" that a "single digit" ratio between a punitive award and a compensatory award "is more likely to comport with due process" than a ratio of 145 to 1 - the ratio between the punitive award and the reduced compensatory award in Campbell.

Indeed, Kennedy suggested, where the compensatory award is "substantial" (as it was in State Farm), perhaps the ratio between compensatory awards and punitive awards should be no more than 1 to 1. In other words, according to Kennedy's reasoning, the Campbells should have gotten punitive damages of about $1 million, not $145 million.

*Campbell Implies that A Company Must Be Bad To the Plaintiff, Not Just Bad*

Obviously, these pronouncements are significant. But I think another aspect of the decision is even more significant. Kennedy is sending a message to the state courts that the U.S. Supreme Court will no longer tolerate punitive damages being used to punish a company for just being just flat-out "bad." Instead, the company must have acted badly toward the particular plaintiff.

At oral argument, the Campbells' attorney, the very able Laurence Tribe, tried to argue that, indeed, the $145 million punitive damages award was based on State Farm's having acted reprehensibly toward Curtis Campbell in particular. But as Justice Kennedy points out in his opinion, that claim is simply implausible.

Quite to the contrary, "[f]rom their opening statements onward the Campbells framed this case as a chance to rebuke State Farm for its nationwide activities." Most notably, as I wrote in an earlier column on this case, Campbell told the jury about State Farm's corporate policies from around the country, even those that were basically unconnected to the legal dispute between him and State Farm.

*An Effective Trial Strategy Backfires Before the U.S. Supreme Court*

Until they got to the U.S. Supreme Court, the Campbells had very deliberately built their case around the theme that corporate wrongdoing around the country cannot be deterred unless large punitive damages are awarded.

That is why introduced evidence that suggested that State Farm had acted badly towards its customers in California and North Carolina. That is why introduced evidence that State Farm was rarely sued by customers whom it wronged. That is why they introduced evidence about State Farm's wealth--to show that only a big award would get State Farm's attention.

The Campbell's strategy at trial was very effective, and not at all unusual. It is a well-known trial strategy. It is also an approach endorsed by many academics and consumer activists.

*Members of the law and economic movement have argued for a long time that large punitive damages--especially punitive damages that are very high relative to the compensatory damages awarded--are necessary to achieve the right level of deterrence to protect society from tortious conduct.*

Members of the consumer movement, such as Ralph Nader and trial lawyers who are sympathetic to Nader's cause, take the same approach. They contend that punitive damages sometimes have to be very high in order to deter corporate wrongdoing.
A Strong Rejection of the "Send A Message" Punitive Damages Theory

For many years, the U.S. Supreme Court has been silent about the idea that punitive damages should be used to promote general deterrence— that is, that they should serve as a substitute form of public regulation. The Court neither endorsed nor vetoed this "send a message" theory of punitive damages.

Accordingly, over the past eight years, since the Court decided *BMW v. Gore*, the idea that punitive damages should be used to "send a message" to corporate America has been used in closings in numerous jury trials around America. The trials have involved Big Tobacco, asbestos litigation, and countless other topics. *State Farm* should go a long way to slowing down that trend.

In theory, using punitive damages to "send a message" to a big company like State Farm, when it acts badly, is a nice idea. The problem is trying to put it into practice.

For one thing, as Justice Kennedy noted in his Campbell opinion, sometimes the conduct that injured the plaintiff is actually legal in other states. For another thing, as Kennedy also noted, sometimes the plaintiff tries to sweep in conduct by the defendant that occurred elsewhere regardless of the fact that the conduct did not injury the plaintiff, and has only a tenuous connection to the conduct that did injure the plaintiff. This approach is used merely to inflame the passions of the jury.

Those who defend the use of punitive damages to deal with defendants' conduct that goes beyond the case at hand have a response to these points. They say that a good trial judge should be able to ameliorate the problems identified above by, for example, making evidentiary judgments as to relevance that keep truly irrelevant material out.

They may be right - but, again, only in theory. Recent history suggests that, in practice, trial judges have not done a particularly good job at deciding what sort of evidence of national conduct by the defendant is relevant. Instead, they have allowed plaintiffs' cases to sweep too wide.

What is the real import of the Court's in *State Farm*? The case certainly stands for the principle that punitive/compensatory ratios must be kept under control. But in my opinion, it also stands for another key principle: The "anything goes" attitude to introducing evidence of the defendant's bad behavior in assessing punitive damages will no longer be tolerated.

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