

\$500,000 Punitive Damages Award in Bad Faith Action Shocks Delaware Court's Conscience and Justifies New Trial on Liability and Damages

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The Delaware Superior Court in *Powell v. AmGuard Insurance Company*, C.A. No. K17C-11-003 JJC, 2020 Del. Super. LEXIS 109 (Del. Super. Ct. Mar. 2, 2020) (Clark, J.) recently held that a jury's \$500,000 punitive damages award on a compensatory damages award of \$28.22 in a bad faith action "disregarded the great weight of evidence to such a degree that it shock[ed] the Court's conscience." Accordingly, the court granted AmGuard Insurance Company's (AmGuard) post-trial motion for a new trial. Further, the court ordered retrial of both liability and damages because the plaintiff's counsel's inflammatory and unsupported closing statements likely prejudiced the jury's liability determination in addition to its damages award.

The plaintiff – personal representative of the Estate of Mark Krieger – sued AmGuard for bad faith arising out of 2.5-month delay in issuing workers' compensation payments to Mr. Krieger, its insured's employee. The delayed payments totaled \$7,300, which AmGuard ultimately paid. As Mr. Krieger died of unrelated causes shortly after filing suit, he was not deposed and the plaintiff presented no direct evidence at trial of the delay's impact on Mr. Krieger.

Rather, the plaintiff's counsel relied on closing statements that "were not based upon the evidence and inflamed the jury." The plaintiff's counsel referenced harm from the delay that the evidence did not support, including that Mr. Krieger was in "financial ruin," his "lights [were] about to be turned off," and even forecasted homelessness. The plaintiff's counsel stated (and at times shouted and cried) that AmGuard stole from Mr. Krieger, "lights their cigars with [the amount of] money [at issue here,]" and had a "filthy devotion to money, which they elevate over human life[,] safety[,] and ... welfare." He cautioned against "abusive corporations" and promised the jury more power in rendering their verdict than they would ever again have in their lives.

The jury found the delay unreasonable, returned a verdict for the plaintiff, and awarded \$500,000 in punitive damages. The court previously held that compensatory damages would be capped at interest on any unjustified delay. The parties stipulated after trial that those damages totaled \$28.22, resulting in a punitive to compensatory damages ratio of over 17,000 to 1.

In its post-trial motion for remittitur or new trial, AmGuard focused on the ratio approach applied in *Delucia v. Great Stuff, Inc.*, 2015 WL 5157127, at *4 (Del. Super. Apr. 10, 2015) (suggesting ratios over four to one would be unconstitutional). However, identifying no "fixed standard" in any Delaware decision, including *Delucia*, the court relied on the three guideposts in *BMW v. Gore*, 517 U.S. 559 (1996) to evaluate a punitive damages award post-trial:

1. the degree of reprehensibility of the defendant's conduct;
2. the disparity between the actual or potential harm suffered by the plaintiff and the damages award; and
3. the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

First, the evidence against AmGuard supported no more than "recklessness," the "least egregious" state of mind justifying a punitive damages award. Second, the court noted ratios far less than 17,000 to 1 have been found excessive, and even if the plaintiff never received the \$7,300 owed, the potential harm to punitive damages ratio was "grossly disproportionate." Third, the court agreed with AmGuard that the "more apt" benchmark for punitive damages was a civil penalty for an employer's failure to pay wages and which would suggest a penalty of no more than \$7,300 in this case. The plaintiff, on the other hand, proposed a felony criminal statute for altering sales receipts with intent to fraud that would suggest a \$500,000 penalty. The court reasoned "[t]o compare a reckless failure to pay workers' compensation benefits to an intentionally fraudulent felony is inappropriate." Applying the *Gore* guideposts to the evidence, the punitive award was "excessive to the point that it shock[ed] the court's conscience and sense of justice."

The court found that a new trial was therefore "necessary because of the grossly excessive verdict that was against the great weight of the evidence." Further, because the jury's verdict likely resulted from passion or prejudice caused by the plaintiff's counsel's closing, the court felt it likely impacted the jury's liability finding as well. As a result, the court could not make the "required finding that issues of liability and damages were distinctly considered" and ordered a new trial to include both.

The *Powell* court's thorough application of the *Gore* guideposts provides a useful framework for post-trial arguments based on large punitive damages awards, especially for insurers in bad faith actions. The plaintiff's counsel's blatant departures from the evidence and inflammatory closing ultimately prevented the punitive damages award from sticking in this case.

White and Williams' attorneys, John D. Balaguer, Edward M. Koch and Elizabeth C. Dolce served as post-trial co-counsel to AmGuard in this case.

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