

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>THE WILLOW INN, INC.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
v.	:	
	:	
<b>PUBLIC SERVICE MUTUAL</b>	:	
<b>INSURANCE COMPANY,</b>	:	<b>No. 00-5481</b>
<b>Defendant.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.** **May** , **2003**

This is an insurance bad faith action pursuant to 42 PA. CONS. STAT. § 8371 that was tried without a jury in October 2001 and resulted in an award of compensatory and punitive damages. Defendant appealed, and the United States Court of Appeals for the Third Circuit vacated the punitive damages award and remanded this matter for a determination as to whether the punitive damages award of \$150,000 is constitutionally excessive. For the reasons set forth below, I find that the punitive damages award is not constitutionally excessive.

**I. BACKGROUND**

Plaintiff Willow Inn, Inc. (“Willow Inn”) is a restaurant, bar, and residence in Willow Grove, Pennsylvania.<sup>1</sup> In June 1998, the Willow Inn was significantly damaged by a windstorm. Within several days of the storm, Plaintiff undertook efforts to recover insurance proceeds under its

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<sup>1</sup> The facts discussed herein are based on the Court’s Findings of Fact set forth in the Court’s Memorandum and Order filed January 4, 2002. As used below, “Findings” refers to the numbered Findings of Fact set forth in that Memorandum. I note that there is no indication in the Third Circuit’s Opinion that any of the findings of fact were erroneous.

insurance policy from Defendant Public Service Mutual Insurance Company (“PSM”). Despite Plaintiff’s diligent efforts, and despite the fact that there was no dispute regarding coverage, Plaintiff did not receive the insurance proceeds from PSM until more than two years after the date of the windstorm.

Subsequently, Plaintiff commenced this diversity action against PSM, alleging breach of contract and bad faith conduct in violation of 42 PA. CONS. STAT. § 8371. The case proceeded to a bench trial. Finding that PSM acted in bad faith, I entered judgment in favor of the Willow Inn in the amount of \$152,000, including \$2,000 in compensatory damages and \$150,000 in punitive damages.<sup>2</sup> I later awarded the Willow Inn attorney’s fees and costs. On appeal, the Third Circuit reversed the award of punitive damages, affirmed in all other respects, and remanded this matter for a determination with respect to whether the punitive damages award conforms with the Supreme Court’s dictates in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) and *State Farm Mutual Automobile Insurance Company v. Campbell*, \_\_\_ U.S. \_\_\_\_, 123 S. Ct. 1513 (Apr. 7, 2003). See *Willow Inn, Inc. v. Pub. Serv. Mutual Ins. Co.*, No. 02-2145, slip op. at 4-5 (3d Cir. May 20, 2003).

## **II. DISCUSSION**

In *Gore*, the Supreme Court struck an award of punitive damages and held that “grossly excessive” awards “enter the zone of arbitrariness that violates the Due Process Clause of the

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<sup>2</sup> The insurance policy at issue provided that PSM would “pay up to \$2,000 for [the Willow Inn’s] reasonable expenses in preparing the proof of [its] loss. . . .” (Finding No. 19.) Because PSM had never paid the Willow Inn for the costs it incurred in preparing its proof of loss with respect to the property damage, I awarded the Willow Inn \$2,000 in compensatory damages consistent with the terms of the policy. (*Id.*)

Fourteenth Amendment.” 517 U.S. at 568. The *Gore* Court also established guidelines for assessing whether punitive damages awards are grossly excessive. *Id.* at 574-75. Recently, the Court reaffirmed the principles underlying the *Gore* decision, and specifically reiterated the importance of the three indicia or guideposts announced in *Gore* for affixing awards of punitive damages: (1) the degree of reprehensibility of the tortious conduct; (2) the ratio of punitive damages to actual or potential harm; and (3) the difference between the punitive damages award and the civil penalties authorized or imposed in comparable cases. *See Campbell*, 123 S. Ct. at 1521 (*citing* 517 U.S. at 574-575). As the Court explained, “[t]he principles set forth in *Gore* must be implemented with care, to ensure both reasonableness and proportionality.” *Id.* at 1525-26. In reaching my decision, I consider each of these guideposts.

**A. Degree of Reprehensibility of Defendant’s Conduct**

“Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.” *Gore*, 517 U.S. at 575. In other words, “punitive damages may not be ‘grossly out of proportion to the severity of the offense.’” *Id.* at 576 (*quoting TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 453 (1993)). The Supreme Court has instructed courts to “determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *Campbell*, 123 S. Ct. at 1521 (*citing Gore*, 517 U.S. at 576-577); *see also Inter Med. Supplies, Ltd. v. Ebi Med. Sys.*, 181 F.3d 446,

467 (3d Cir. 1999) (discussing factors to be considered in determining degree of reprehensibility of defendant's conduct).

Here, three of the aggravating factors associated with particularly reprehensible conduct are present. First, the target of the conduct was financially vulnerable. At the time of the storm, the Willow Inn was a relatively modest family-run business which also served as the residence of certain family members. Consequently, the need for obtaining the insurance proceeds was particularly pressing. (10/22/01 Tr. at 21-32.) Second, as the Supreme Court has indicated, "repeated misconduct is more reprehensible than an individual instance of malfeasance." *Gore*, 517 U.S. at 577 (citing *Gryger v. Burke*, 334 U.S. 728, 732 (1948)). PSM's bad faith in this case caused the substantial and unreasonable delay in making payment to the Willow Inn. This delay was not the result of one specific event, but, rather, a series of instances in which PSM failed or refused to act on Plaintiff's claim. (Findings Nos. 14, 25, 27, 36, 40.) Third, the unreasonable delay at issue in this case was not the result of "mere accident." At trial, "PSM offered no credible basis for its substantial delay" (Findings Nos. 27, 40), rendering its conduct "outrageous" (Findings Nos. 29, 42). Put differently, PSM's conduct was more than negligent, evincing reprehensibility within the *Gore/Campbell* framework. Given these considerations, this case involves a degree of reprehensibility sufficient to justify a significant sanction against PSM.

**B. Ratio of Punitive Damages to Actual or Potential Damages**

The second indicium of an excessive punitive damages award is the ratio of such an award to the amount of harm, or potential harm, inflicted on the plaintiff. *See Gore*, 517 U.S. at 580. Accordingly, to determine if an award of punitive damages is constitutionally permissible, courts must look at the "disparity between the harm or the potential harm suffered . . . and [the] punitive

damages award.” *Gore*, 517 U.S. at 574-75.<sup>3</sup> Although the Court declined to “impose a bright-line ratio which a punitive damages award cannot exceed,” *Campbell*, 123 S. Ct. 1524, it noted that few awards exceeding a single-digit ratio will satisfy due process.

Here, the punitive damages award of \$150,000 is approximately equal to the value of the Willow Inn’s claim under the policy and the payment that it belatedly received. (Findings No. 15,44.) If Plaintiff had not been as diligent as it had been in pursuing its insurance claim (Findings Nos. 26, 39), the delay almost certainly would have been even lengthier, if not indefinite. As such, PSM’s misconduct created the risk that Plaintiff would not have received the insurance proceeds. Because the amount of punitive damages awarded is based on the value placed on the amount of the Willow Inn’s potential harm, the ratio at issue is approximately one to one – a ratio that does not “raise a suspicious judicial eyebrow.” *Gore*, 517 U.S. 583 (quoting *TXO*, 509 U.S. at 481 (O’Connor, J., dissenting)); see also *Wood v. Allstate Ins. Co.*, Civ. A. No. 96-4574, 1997 U.S. Dist. LEXIS 14663, at \*14, 1997 WL 602796 at \* 7 (E.D. Pa. Sept. 19, 1997) (upholding \$150,000 punitive damages award in bad faith action where claim under insurance policy was settled for \$10,000). Cf. *Campbell*, 123 S. Ct. at 1526 (striking punitive damage award where ratio to harm was 145 to 1; *Gore*, 517 U.S. at 582 (striking punitive damage award where ratio to harm was 500 to 1).

### **C. Other Civil Penalties**

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<sup>3</sup> In *Campbell*, the Court expressly indicated that the “potential harm” to Plaintiff was relevant in determining whether an award of punitive damages is excessive. *Campbell*, 123 S. Ct. 1513, 1520 (citing *Gore*, 517 U.S. 575); see also *Inter Med. Supplies, Ltd. v. Ebi Med. Sys.*, 181 F.3d 446, 465 (3d Cir. 1999) (quoting same).

“The third guidepost in *Gore* is the disparity between the punitive damages award and the ‘civil penalties authorized or imposed in comparable cases.’” *Campbell*, 123 S. Ct. at 1526 (*quoting Gore*, 517 U.S. at 575). Relying on *Gore*, the Third Circuit has indicated that the third guidepost reflects, in part, “deference to legislative judgments regarding appropriate sanctions.” *Inter Med. Supplies*, 181 F.3d at 467 (*citing Gore*, 517 U.S. at 583). This guidepost also rests on principles of fair notice: “[N]otions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a state may impose.” *Campbell*, 123 S. Ct. at 1520 (*quoting Gore*, 517 U.S. at 574).

With respect to both fair notice and legislative intent, it is significant that Pennsylvania’s bad faith statute, section 8371, authorizes awards of attorney’s fees, costs, and interest in addition to any award of punitive damages. 42 PA. CONS. STAT. § 8371; *see also Superior Precast, Inc. v. Safeco Ins. Co. of Am.*, 71 F. Supp. 2d 438, 453 (E.D. Pa. 1999) (describing section 8371 remedies as “penal” and interest awarded under section 8371 as “superinterest”). As in the instant case, courts have awarded significant attorney’s fees under section 8371. *See Polselli v. Nationwide Mut. Fire Ins. Co.*, Civ. A. No. 91-1365, 1998 U.S. Dist. LEXIS 19396, at \*12, 1998 WL 855494, at \* 4 (E.D. Pa. Dec. 10, 1998) (assessing attorney’s fees in amount of \$107,130 in bad faith action); *Martin v. Nat’l Grange Mut. Ins. Co.*, 59 Pa. D. & C.4th 211, 221, 224 (C.C.P. Centre 2000) (assessing attorney’s fees in amount of \$62,245 in bad faith action). Because attorney’s fees are authorized by section 8371 – and have been granted in amounts roughly equal to the punitive damages award in this case – the relevant considerations under the third guidepost also support the imposition of the \$150,000 award.

### **III. CONCLUSION**

In light of the foregoing analysis under the *Gore/Campbell* guideposts, I conclude that the punitive damages award of \$150,000 was not excessive. Because the Third Circuit vacated the Court's Memorandum and Order of January 4, 2002, an appropriate Order entering judgment follows.

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<b>v.</b>	:	
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<b>PUBLIC SERVICE MUTUAL</b>	:	
<b>INSURANCE COMPANY,</b>	:	<b>No. 00-5481</b>
<b>Defendant.</b>	:	

**ORDER**

**AND NOW**, this        day of **May, 2003**, for the foregoing reasons, it is hereby **ORDERED**  
that:

Judgment is entered in favor of Plaintiff Willow Inn, Inc. and against Defendant Public Service Mutual Insurance Company in the amount of One Hundred Fifty-Two Thousand Dollars (\$152,000.00).

**BY THE COURT:**

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**Berle M. Schiller, J.**