

New Decision Addressing Punitive Damages Award for Excessiveness Under Federal Law

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Practice Alert: New Decision from Fourth District Court of Appeal Addresses Constitutional Excessiveness Standard for Punitive Damages Awards

The Fourth District Court of Appeal recently released its decision in *Lawnwood Medical Center, Inc. v. Sadow*, Case No. 4D08-1968 (Fla. 4th DCA Mar. 24, 2010), addressing a punitive damages award for excessiveness under federal law. The Plaintiff, a physician with staff privileges, sued a hospital for breach of contract after it granted another surgeon exclusive privileges for cardiovascular surgery. The Plaintiff amended his complaint alleging slander per se based on statements about the Plaintiff's qualifications made by the hospital's senior executives to other physicians during the litigation. The jury awarded no compensatory damages on the slander claim, not even nominal damages, but awarded \$5 million in punitive damages. The hospital did not appeal liability or entitlement to punitive damages; it only raised an issue concerning the excessiveness of the award under federal law. In upholding the punitive damage award, the Court discussed several U.S. Supreme Court decisions addressing punitive damages and whether attendant maximum ratios between punitive and compensatory damages should be applied. The Court noted that two of these decisions, *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), and *BMW of N. Am. Inc. v. Gore*, 517 U.S. 559 (1996), although applying maximum ratios, also indicated that punitive damage awards in excess of the ratios did not violate due process in cases involving particularly egregious and intentional conduct. The Court also noted that another decision, *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993), refused to apply a maximum ratio and looked primarily to the egregiousness of the conduct. The Fourth District found *TXO* to be the most on point, based on its belief that the egregious conduct in that case was the most similar to the type engaged in by the hospital here. Because the federal cases indicated that state law plays a critical role in a review of punitive damages, the Fourth District also looked to Florida statutes and case law.

The Court noted that, although Florida statutes limit the amount of punitive damages to three times the amount of compensatory damages, there is an unlimited exception where the defendant "had a specific intent to harm the claimant." The Fourth District concluded that Florida's statutory maximum ratio exception satisfies the dictates of federal precedent on this issue and does not violate due process where the conduct of the defendant is particularly egregious and intentional, noting that punitive damages can be awarded in such circumstances "to the extent of [the defendant's] personal ability to pay." As to slander per se specifically, the Court held that a finding of liability, coupled with an express finding that the defendant intended to injure the plaintiff and in fact caused injury, is enough for a jury to award substantial punitive damages even without any compensatory damages being awarded.

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