THE STILL UNCERTAIN IMPACT OF THE SUPREME COURT’S ATTEMPT TO REDUCE EXCESSIVE PUNITIVE DAMAGES

by

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More than a year after the Supreme Court made a determined effort to reduce large punitive damages awards in State Farm Mutual Automobile Insurance Co. v. Campbell, the true impact of that ruling remains in doubt. Although some lower courts are carefully following the Supreme Court’s guidance, others are finding ways to evade or perhaps even ignore the court’s apparent intent. Not surprisingly, juries seem least affected by the court decision. It is still too early to draw final conclusions on State Farm’s success in limiting excessive punitive awards. Nevertheless, this paper will analyze the record of punitive damages cases on remand from the Supreme Court, review federal appellate court decisions interpreting the high court’s guidance, and consider selected trial court rulings and verdicts in an attempt to judge the extent of compliance with State Farm in the year after the April 2003 ruling.

The State Farm Decision

A brief review of the State Farm opinion will be necessary to evaluate its success. In a bad faith insurance case, a jury ordered the insurance company to pay $145 million in punitive damages to its insured, Curtis Campbell. The Utah Supreme Court upheld the massive verdict, even though Campbell and his wife received only $1 million in compensatory damages in the suit alleging bad faith, fraud, and intentional infliction of emotional distress and in fact had suffered no real economic loss. In a 6-3 decision written by Justice Kennedy, the U.S. Supreme Court rather easily decided that the $145 million award was excessive and thus a denial of due process under the Fourteenth Amendment.

The high court’s specific guidance about punitive damages was more significant than the outcome itself. Reinforcing its most important prior decision on large punitive awards, BMW of North America, Inc. v. Gore, the Supreme Court in State Farm again focused on the three “guideposts” it used in Gore for evaluating punitive awards -- the degree of reprehensibility of the defendant’s conduct, the ratio of the punitive damages award to the actual or potential harm suffered by the plaintiff, and the disparity between the size of the punitive verdict and other civil sanctions for comparable misconduct.

Regarding the reprehensibility factor (which the Supreme Court called “the most important indicium of the reasonableness of a punitive damages award”), the State Farm ruling prohibited using a defendant’s conduct nationwide in setting punitive damages, if that out-of-state behavior had no connection to the plaintiff’s injury. “A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business,” the court wrote. On the comparable civil sanctions factor, the justices discouraged consideration of possible criminal penalties in evaluating punitive awards, noting: “Punitive damages are not a substitute for the criminal process, and the remote possibility of a criminal sanction does not automatically sustain a punitive damages award.” Otherwise, State Farm barely addressed the comparable civil sanctions factor, which officially is still accorded equal standing with the other two guideposts, but in practice seems to have far less significance.

The most important and definitive direction from State Farm related to the most quantifiable factor -- the ratio between the punitive and compensatory awards. As a preliminary matter, the State

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Farm decision initially repeated the Gore terminology about comparing the punitive damages to “actual or potential harm,” but subsequently shifted its wording to discuss the ratio in terms of punitive to “compensatory damages.” Of course, compensatory damages are not always equal to actual or potential harm. It is difficult to determine if this change in terminology was intended as official guidance, or if it merely reflected a shorthand way to state the ratio question. Whether intentional or not, the ambiguity has left some leeway for lower courts in reviewing punitive awards.

The State Farm opinion also repeated the court’s refusal, stated in Gore and prior decisions, to set a “bright-line” test for the size of punitive awards. “We decline again to impose a bright-line ratio which a punitive damages award cannot exceed,” the court said. Nevertheless, the justices then proceeded to give quantifiable, rather specific guidelines about what ratios might not be acceptable by stating that “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” The ruling’s instructions continued by citing prior cases that favorably mentioned a 4-to-1 ratio and by referring to legislative history supporting double, treble, or quadruple damages. In summary, the court noted:

While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State’s goals of deterrence and retribution, than awards with ratios in range of 500 to 1 … or, in this case, of 145 to 1.

Yet, State Farm also allowed for the possibility of exceptions -- for both higher and lower ratios. Higher ratios could be acceptable when “a particularly egregious act has resulted in only a small amount of economic damages.” On the other hand, the decision noted: “When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” The court did not define the term substantial, although it did conclude that the $1 million award to the Campbells in State Farm was substantial.

In addition, the court cautioned against large punitive awards based merely on the defendant’s high net worth. “The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award,” the court wrote. The opinion did not completely preclude consideration of a defendant’s wealth, but instead sought to stress the three Gore factors instead of the defendant’s financial condition.

Of course, the court did not summarize all of its statements or rules in simple formulations, and its wording left some room for legitimate dispute by advocates for either plaintiffs or defendants. However, a fair reading of the full opinion would lead to the following generalizations and corresponding uncertainties.

General Principle 1: A punitive award that is ten or more times the compensatory award is likely to be unconstitutional, absent unusual circumstances. Remaining Questions: Should the ratio be calculated based only on the compensatory damages award, or on the reviewing court’s estimate of the possibly larger actual or potential harm? When the court expresses a strong preference for “single-digit” ratios, does that mean the ratio should be 9 to 1 or lower? Or is anything under 10 (9.99 to 1, for example) still acceptable?

General Principle 2: Any punitive award more than four times the harm to the plaintiff is at least susceptible to a due process attack by the defendant. Remaining Questions: How binding is the court’s “instructive” guidance about ratios, and its seeming preference for a 4-to-1 ratio? Is it possible that this ambiguity in the ruling’s statements on ratios was necessary to obtain a comfortable majority of six justices in State Farm?

General Principle 3: Exceptions to the general principles may be available. Especially reprehensible conduct that caused only a small amount of economic damage might justify a higher ratio, whereas a substantial compensatory award might require a ratio as low as 1 to 1. Remaining Questions: By a higher ratio, does the court mean higher than its stated preference for 4 to 1? Or perhaps even higher than 10-1? What exactly is only a small amount of economic damages, and what is a substantial
compensatory award? Are these higher or lower ratios always expected under the stated circumstances, or is that left to the discretion of the reviewing court?

**General Principle 4:** A plaintiff cannot rely on a defendant’s net worth alone to support an excessive punitive damages award. **Remaining Questions:** As a practical matter, how much does this limit any consideration of the defendant’s wealth at trial? How will the reviewing court be able to determine if the jury was prejudiced by the defendant’s wealth? Will this principle dilute one of the long-standing theories behind punitive damages -- making them large enough to punish or deter a particular defendant?

**The Record on Remand**

An obvious, though not necessarily the most indicative, way to gauge the success of *State Farm* is to examine the result in that specific case and in similar cases remanded by the Supreme Court. As one would expect after release of an important decision, the Supreme Court in the six months after *State Farm* granted certiorari, vacated, and remanded ten other punitive damages cases to various lower courts for “further consideration in light of” the new Supreme Court ruling. A review of those cases yields a mixed, yet highly incomplete, record for the impact of *State Farm*.

On remand in the bad faith case that yielded the Supreme Court ruling, the Utah Supreme Court subsequently reduced the punitive damages to only $9 million (compared to $1 million in compensatory damages), rather than the $145 million punitive award it had previously found appropriate. While that might appear to signal substantial acquiescence to the Supreme Court decision, in fact the Utah court’s opinion sounded more like grudging compliance, if not near defiance. In its *State Farm* ruling, the U.S. Supreme Court acknowledged the role of the lower courts by saying: “The proper calculation of punitive damages under the principles we have discussed should be resolved, in the first instance, by the Utah courts.” At the same time, though, the high court strongly suggested applying a ratio of roughly 1 to 1 (which would have resulted in a punitive award of only $1 million). “An application of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a punitive damages award at or near the amount of compensatory damages,” the majority opinion stated.

With the U.S. Supreme Court sending arguably mixed messages, the Utah Supreme Court apparently chose to follow the message it preferred. Focusing primarily on the reprehensibility of State Farm’s conduct, the Utah court justified its decision to use a 9-1 ratio (at the top of the single-digit range) “based on our concern that State Farm’s defiance strongly suggests that it will not hesitate to treat its Utah insureds with the callousness that marked its treatment of the Campbells.” The Utah court also cited reprehensibility in explaining its decision to elude the guidance toward a 1-to-1 ratio:

But, neither is this a proper case to limit a punitive damages award to the amount of compensatory damages. The 1-to-1 ratio between compensatory and punitive damages is most applicable where a sizeable compensatory damages award for economic injury is coupled with conduct of unremarkable reprehensibility. This scenario … does not describe this case.

In essence, the Utah Supreme Court disregarded both the U.S. Supreme Court’s general preference toward ratios of 4 to 1 or lower, and its fairly clear direction toward a 1-to-1 ratio under these facts. However, by keeping the ratio within the single digits, the Utah Supreme Court may have shown just enough compliance to avoid another reversal, especially since the high court probably would prefer not to return to the same case. State Farm has not yet decided whether to appeal the recent Utah decision.

The mixed record on remand is seen particularly in the plight of the ten other punitive damages cases remanded by the Supreme Court after *State Farm*. As of August 2004, four have resulted in
significant reductions in the punitive awards; three others have seen large punitive verdicts reaffirmed by lower courts; and three remain undecided.

The strongest evidence of compliance with *State Farm* on remand comes in a California product liability suit, involving a rollover accident in a Ford Bronco that resulted in three deaths and injuries to three other victims. A jury ordered Ford Motor Co. to pay compensatory damages of $4.6 million and punitive damages of $290 million (for a ratio of 63 to 1). The California Court of Appeal affirmed the full award in 2002, with the California Supreme Court declining to review the case the same year.

However, after the Supreme Court remanded for reconsideration in light of *State Farm*, the California Court of Appeal drastically cut the punitive damages to $23.7 million, for a ratio of 5 to 1. The same three justices that had previously affirmed the punitive award acknowledged that *State Farm* had changed the law on punitive damages. The new punitive award of $23.7 million was based in part on applying a 3-to-1 ratio to the compensatory damages. Then, based on its view of the reprehensibility factor, the appellate court added $10 million more ($5 million each for the estates of the two deceased parents). Despite contending that even the reduced amount was too high, Ford chose to pay the $23.7 million rather than appeal further.

Similarly, in a financial corporation’s suit against an insurance company for failure to cover a property damage claim, a separate district of the California Court of Appeal had twice previously upheld a $1.7 million punitive award, but reduced it to $360,000 after *State Farm*. Although the total underlying compensatory damages were $165,414, that amount covered both contract and fraud claims. Finding that the contract claim did not justify punitive damages, the court set the lowered punitive award at roughly four times the non-contract compensatory damages.

Two cases from Oregon’s intermediate appellate court also resulted in significant reductions. In a suit against the manufacturer of a glass fishbowl that shattered and caused serious injuries to the plaintiff, a jury awarded $1 million in punitive damages when the compensatory award was only $100,854 (for a ratio of almost 10 to 1). The Oregon Court of Appeals had affirmed the punitive verdict in 2001, finding adequate evidence to support a theory that the defendant manufacturer had acted with conscious indifference to the danger. After *State Farm*, though, the Oregon appellate court deferred to the new Supreme Court ruling and lowered the punitive award to $403,416 -- exactly four times the compensatory damages.

In addition, a physician’s suit against a drug manufacturer alleging fraudulent misrepresentations about a drug being used by the physician’s patient originally yielded a $22.5 million punitive verdict for the plaintiff, 45 times the compensatory award of $500,000. (A related claim by the patient against the pharmaceutical company was settled.) The Oregon Court of Appeals slashed the punitives awarded to the physician to $3.5 million (a 7-to-1 ratio), finding that while the ratio should not exceed single digits after *State Farm*, the defendant’s conduct was reprehensible enough for a ratio higher than 4 to 1.

Of the three remanded cases to date that reaffirmed the punitive damages, two appear to be significant departures from the guidance of *State Farm*. One of those departures came in a California case involving a complicated breach of contract and fraud suit relating to an uncompleted commercial real estate transaction. A jury awarded $1.7 million in punitive damages, even though the compensatory damages were only $5,000 (a substantial 340-to-1 ratio). The California Court of Appeal (but a different district than the ones that cut two other verdicts) upheld the punitive award, contending that *State Farm* “was not intended to dispossess the States of their discretion over the imposition of punitive damages.” In addition, the court decided that “actual harm” to the plaintiff was not limited to the $5,000 in out-of-pocket expenses awarded as compensatory damages. Rather, it should also include $400,000 for “lost opportunity,” calculated by the difference in the proposed purchase price and the appraised value of the building that was to be sold. Thus, by finding a total of $405,000 in actual harm, the punitive award of $1.7 million yielded a ratio of only slightly more than 4 to 1.

Moreover, the California court considered the defendant’s net worth in evaluating the size of the punitive damages, without even addressing the statement from *State Farm* that a defendant’s wealth
cannot justify an otherwise unconstitutional punitive award. Either of these issues -- the reference to the defendant’s wealth or the possibly strained method of calculating actual harm -- might be enough to interest the U.S. Supreme Court in reviewing this punitive award again. (The remand after State Farm was the second time that the high court had sent the verdict back for further consideration.\textsuperscript{32}) However, the California Supreme Court will address the case first, as it has agreed to review this real estate case and a separate punitive damages case, perhaps to resolve a conflict among different districts of the California Court of Appeal regarding interpretation of State Farm.\textsuperscript{33} This pending decision from the Supreme Court of the nation’s most populous state could prove to be a major turning point for the success of State Farm.

The second surprising result involved a fraud suit brought by the widow of a longtime cigarette smoker in Oregon. A jury had ordered Philip Morris to pay $821,485 in compensatory damages, but $79.5 million in punitives (a ratio of 96 to 1). Even after remand from the Supreme Court, the Oregon Court of Appeals affirmed the massive punitive award, basing its decision in part on the reprehensibility of the defendant’s conduct.\textsuperscript{34} To further justify the high ratio, the appellate court focused on “potential harm” and found that “it would have been reasonable for the jury to infer that at least 100 members of the Oregon public had been misled by defendant’s advertising scheme over a 40-year period in the same way” that the plaintiff had.\textsuperscript{35} Considering this “potential magnitude of damage to the public” would bring the ratio within the 4 to 1 guideline, according to the court.\textsuperscript{36}

The more defensible decision that saw the punitive award reaffirmed on remand involved a patent, trade secret, and fraud battle between two businesses. A federal court jury had awarded the plaintiff $15 million in compensatory damages and $50 million in punitives (for a ratio of 3.33 to 1).\textsuperscript{37} It is interesting to speculate on why the Supreme Court vacated and remanded this case in the first place, considering the fairly low ratio. Was it merely part of a general housecleaning of all punitive damages cases after State Farm? Or might it indicate that the high court thought that this was a case where the punitive verdict should be only equal to the substantial compensatory award, rather than any amount larger?

Whatever the court’s reasoning for the remand, it had no practical effect. The Court of Appeals for the Federal Circuit reaffirmed the $15 million punitive award, saying that “the proportion of punitive damages to compensatory damages does not even approach the possible threshold of constitutional impropriety.”\textsuperscript{38} The Federal Circuit pointed out that this verdict was below the 4-to-1 ratio guidance, without addressing the question about appropriate ratios when the compensatory damages are substantial. The Supreme Court declined to review this latest ruling from the Federal Circuit.\textsuperscript{39}

### Federal Appellate Court Rulings

Beyond the decisions on remand, a review of other U.S. Courts of Appeals decisions is similarly inconclusive about the effect of the Supreme Court’s guidance. State Farm was cited in at least 30 federal appellate court rulings in the year after the Supreme Court decision. In more than half, however, the court did not make a final decision on punitive damages or the outcome was not based primarily on State Farm principles. Rather, these rulings were either preliminary matters, remands to lower courts for further consideration, or only passing references to the Supreme Court’s new ruling.

Of the remaining decisions dealing with State Farm, only four saw the punitive awards cut or eliminated. Even in these decisions, though, the ratio guidance from State Farm did not play a major role in the reductions, as the courts relied on other aspects of state or federal law, or on other principles from the Supreme Court decision. In fact, one Court of Appeals decision specifically noted that the ratio factor was of “minimal assistance,” instead basing the reduction from $1.25 million to $75,000 in punitive damages on the size of awards in comparable police brutality cases.\textsuperscript{40} A second ruling noted that the ratio did not work well in that case because of the small amount of compensatory damages often provable for violations of the Fair Housing Act.\textsuperscript{41} The court instead relied on the comparable civil
sanctions guidepost to cut the $100,000 punitive award to $55,000. The two other cases reversed punitive awards entirely. In one business dispute, the appellate court found inadequate evidence of reprehensible conduct by the defendant to support a $400 million punitive award. In the second case, there was insufficient proof of the defendant’s net worth to support even a $50,000 punitive award.

Punitive awards were reaffirmed in nine federal appellate court decisions that clearly addressed *State Farm*. Although this total is more than twice the number of cases yielding reductions in the punitives, this statistic alone may not be very telling. In addition to being a small sample, this is more likely a sign that defense attorneys, understandably, are claiming a due process violation based on *State Farm* in any arguable case, while appellate courts remain reluctant to overturn jury verdicts except in unusual circumstances. In fact, five of the nine decisions upholding the verdicts involved only single-digit ratios between punitive and compensatory damages (none exceeding 7.22 to 1, and two at 4 to 1 or lower). A sixth decision focused on the “potential harm” to the plaintiff, in addition to the compensatory award, in finding that punitive damages were not excessive. Yet another case turned on the difficulty of applying the ratio principles when only nominal damages were awarded (an issue that will be discussed more below). Still another punitive award, also in a case with only nominal damages, was affirmed because of procedural failures in raising the punitive damages issue.

Probably the most significant federal appellate court decision affirming a punitive verdict in the year after *State Farm* came from the Seventh Circuit Court of Appeals, with the opinion written by highly respected Circuit Judge Richard A. Posner. Two customers of a motel, who sued after being bitten by bedbugs, presented substantial evidence at trial that the motel had been aware of the problem. A jury awarded each plaintiff $5,000 in compensatory damages but $186,000 in punitives (for a 37-to-1 ratio). The Seventh Circuit upheld the awards, explaining that *State Farm* did not set absolute rules, but presumptions, regarding acceptable ratios. The ruling also pointed out the small compensatory award to the plaintiffs, finding that the “defendant’s behavior was outrageous but the compensable harm done was slight and at the same time difficult to quantify.” This case might indeed be a good candidate for the *State Farm* exception allowing higher ratios when “a particularly egregious act has resulted in only a small amount of economic damages.”

Still, a reasonable question is whether the Supreme Court would be inclined to approve a ratio so much higher than its typical single-digit preference.

**Selected Lower Court Decisions**

Thorough or statistical analysis of the approximately 100 federal trial court rulings and state appellate court opinions applying or at least discussing *State Farm* would not be particularly productive, as most of these rulings will be subjected to further review. Moreover, the outcome in at least some of the federal district court cases could hinge on unusual facts or perhaps even the interpretations and inclinations of individual judges, while many of the state court decisions could be affected by peculiarities of state law. Nevertheless, an analysis of a selected few of these cases will help illustrate the remaining ambiguities or recurring themes in the interpretation of *State Farm*.

One federal district court case, involving the Exxon Valdez oil spill in 1989, stands out as perhaps the most striking example of non-compliance with at least the spirit, if not the letter, of *State Farm*. A federal court jury in Alaska, in a class action suit brought by local businesses and fishermen affected by the oil spill, ordered Exxon to pay $5 billion in punitive damages but only $287 million in compensatory damages (for a ratio of more than 17 to 1). Even before *State Farm*, the Ninth Circuit Court of Appeals had ordered a reduction in the punitive award. The federal district judge responded by grudgingly trimming the punitives to $4 billion in 2002. After the Supreme Court ruling, the Ninth Circuit remanded the reduced $4 billion award to the district court for reconsideration in light of *State Farm*. Yet on this most recent remand, the same federal district judge, H. Russel Holland, actually raised the punitive award to $4.5 billion.
The judge’s decision to increase the damages was based in part on the reprehensibility factor, as he noted that Exxon’s conduct “was many degrees of magnitude more egregious” than the behavior of State Farm or BMW in the two primary Supreme Court cases on punitive damages. Judge Holland also discussed the ratio guidepost, considering the “actual or potential harm” to the plaintiffs, rather than the compensatory damages alone. He augmented the $287 million compensatory award by including the value of settlements voluntarily paid by Exxon in related cases, thus finding the actual harm to be $513.1 million. That process effectively ignored the Ninth Circuit’s prior direction on calculating the ratio, which stated: “The amount that a defendant voluntarily pays before judgment should generally not be used as part of the numerator, because that would deter settlements prior to judgment.”

Judge Holland then determined that this was not a “substantial” compensatory award that might require an even lower ratio under State Farm. As the class action included 32,677 plaintiffs, he calculated the average recovery to be only $15,704 per person, even including all the settlements. The district judge concluded that the jury’s original punitive award of $5 billion was acceptable under the principles of State Farm, as it was less than ten times the $513.1 million in actual harm (and thus still a single-digit ratio). However, noting that the Ninth Circuit had remanded with instructions to reduce the punitive award, the judge set the punitive damages at $4.5 billion by splitting the difference between the $5 billion that he now found justified and the $4 billion he had set on his prior reduction. The $4.5 billion award would leave the ratio under 9 to 1 including all the settlements as actual harm, but at nearly 16 to 1 for the punitive to compensatory damages alone. Of course, Exxon has vowed to continue its appeals, and the Ninth Circuit may be forced to act again.

The Exxon Valdez case vividly demonstrates some of the open questions remaining after State Farm, especially those relating to the ratio. Specifically, while there is no doubt that the punitive award itself is one of the two numbers used in the ratio calculation, exactly what number should the punitive damages be divided by? Is it the compensatory damages alone, or some broader determination of actual harm? Should voluntary settlements of related cases be added to the compensatory damages when calculating the ratio? If there are many different plaintiffs and defendants, with separate awards applicable to each, how should the ratio be calculated? Further, how should courts determine what is a “substantial” compensatory award, calling for a lower ratio? If the $287 million compensatory award against Exxon was not substantial, what is? Should substantiality be determined by the aggregate size of the award, or based on an average payout depending on the number of plaintiffs?

Another bad faith insurance case, this one in federal court in Pennsylvania under diversity jurisdiction, raises questions about the meaning of “potential harm” as part of the ratio calculation. After a windstorm caused significant damage to a restaurant and residence, the insured was forced to wait more than two years to be paid by his insurance company for the loss. In a case tried without a jury, the federal district judge awarded $2,000 in compensatory damages for bad faith, but $150,000 in punitive damages (a 75-to-1 ratio). The Third Circuit Court of Appeals remanded the punitive award for further consideration after State Farm. On remand, the same district judge reaffirmed his earlier award by finding that the punitive damages of $150,000 were roughly equal to the value of the insurance claim. The judge said the value of the claim was the potential harm -- and thus the ratio of punitive damages to actual or potential harm was a very acceptable 1 to 1 -- because the defendant insurance company’s “misconduct created the risk that Plaintiff would not have received the insurance proceeds.”

If potential harm is to remain part of the ratio calculation under State Farm, the Supreme Court may need to provide further guidance on calculating potential harm in order to avoid what might be called a questionable definition in this Pennsylvania case (as well as in the Oregon case against Philip Morris). A more radical approach, but one possibly worth some thought, would consider some means of remanding a punitive damages award to a different trial court for reconsideration, rather than to the same judge who awarded or approved the amount before. The outcomes in both the Exxon Valdez and Pennsylvania insurance cases might be attributed in part to a trial judge’s natural belief in the propriety and accuracy of his or her earlier decision.
As mentioned previously, cases with only nominal underlying damages (often involving some type of civil rights violation) pose special problems for calculating the punitive ratio. A federal district court in Iowa in 2004 upheld jury verdicts of $12,500 in punitive damages to each of four plaintiffs who suffered racial discrimination at a restaurant, even though each received only $1 in nominal damages (for a ratio of 12,500 to 1).\(^\text{62}\) Acknowledging that some courts have virtually disregarded the ratio factor under such circumstances, the federal district judge suggested instead:

> While an argument could be forged that the *Gore* analysis does not apply where there are only awards of nominal and punitive damages; rather than foolishly disregard the holdings of the Supreme Court the more prudent path is to apply the *Gore* guideposts, but place less emphasis on the proportionality requirement than would be accorded in a situation where compensatory and punitive damages are at issue.\(^\text{63}\)

The answer could also lie in the Supreme Court’s permitted exception for egregious acts that result in only minimal economic damages. In upholding the jury verdicts, the federal judge concluded: “This case epitomizes the Supreme Court’s rationale for refusing to erect a strict mathematical formula for the analysis of proportionality -- to do so would leave unpunished the egregious conduct of defendants where the civil rights violation has resulted in injuries that are difficult to quantify.”\(^\text{64}\)

These and other cases help point out the lack of precision in *State Farm*, even though that decision was notable for much greater clarity and guidance than found in many Supreme Court opinions. Another federal district judge’s reading of *State Farm* summarizes this point: “As the parties’ arguments in this case amply illustrate, these guidelines are far from firm and crystal-clear, and may be read by adverse litigants to accommodate their diametric propositions.”\(^\text{65}\) In short, as long as the Supreme Court allows such ambiguity to remain regarding the constitutional limits on large punitive damages, lower courts will continue to enjoy a fair amount of latitude in applying *State Farm*.

### Jury Verdicts

Anecdotal evidence from specific jury verdicts since *State Farm* could suggest that the ruling has had no obvious effect on jurors. Of course, one would not expect non-lawyer jurors to be aware of the case or its principles, and jury instructions on punitive awards remain of little help in many cases.\(^\text{66}\) In late 2003, for example, a natural gas royalties dispute led an Alabama jury to order Exxon Mobil Corp. to pay the State of Alabama $63.6 million in compensatory damages and $11.8 billion in punitive damages (for a ratio of 185 to 1).\(^\text{67}\) A judge subsequently reduced the punitive award to $3.5 billion.\(^\text{68}\) Further appeals are likely, as even the reduced punitive award is still 55 times the compensatory damages. In addition, a few months after *State Farm*, a fraud and breach of contract lawsuit against Flextronics International Ltd. prompted a California jury to award Beckman Coulter Inc. $931 million in punitive damages, even though the compensatory award was only $3 million (a ratio of 310 to1).\(^\text{69}\) However, *State Farm* did facilitate the subsequent settlement of that case. As the punitive award was sure to be slashed on appeal, Beckman Coulter agreed to settle the case for $23 million -- only about 2.5 percent of the original verdict.\(^\text{70}\)

In contrast to this anecdotal evidence, at least some statistical data indicate that large punitive damages awards actually declined in 2003. Analyzing only the year’s 50 largest jury verdicts, *The National Law Journal* found that the median punitive award in those cases fell 60 percent in 2003 over the prior year, from $100.4 million in 2002 to $40 million in 2003.\(^\text{71}\) The data also showed that the median punitive to compensatory ratio was only 1.6 to 1 in 2003, compared to 4.4 to 1 in 2002 and 3 to 1 in 2001.\(^\text{72}\) Less certain, though, is the whether the results would be similar looking at all jury verdicts with punitive awards, rather than only the year’s 50 largest verdicts. Also unclear is whether the decline should be attributed in any way to *State Farm*, especially since the Supreme Court ruling came more than three months into 2003. Moreover, the results for any specific year could be merely a statistical aberration.
General outrage over large punitive awards does not appear to have subsided, whether or not the awards have declined. A good example of this comes from a provision in California Governor Arnold Schwarzenegger’s 2004-05 budget proposal, calling for the state of California to claim for public purposes 75 percent of all punitive verdicts awarded in the state. At least eight other states already take some portion of punitive damages awards for state purposes (and as high as 75 percent in some states). Schwarzenegger’s plan appeared to be both a budget gimmick (with an unreasonably high revenue projection) for a state with significant budget problems, and an indirect effort at tort reform because it also contained a provision that an individual defendant could be forced to pay punitive damages only once for the same conduct. Ultimately, the California Legislature watered down the proposal, keeping the $450 million revenue projection but eliminating any limit on the number of punitive awards against a particular defendant for the same conduct. Even more importantly (and further evidence of budget gimmickry), the provision applies only to those suits that are filed after the budget’s enactment (July 31, 2004) and that are completely adjudicated, including appeals, by June 2006. In short, virtually no California cases are likely to fit within those tight time constraints, unless the sunset provision is extended later.

Conclusion

Despite the many ambiguities and questions still arising from State Farm, its basic message is clear -- a solid majority of six Supreme Court justices saw a need to limit excessive punitive awards. What is less certain is the extent to which they wished to restrain these awards -- a question that is crucial to judging the success of State Farm to date.

If the Supreme Court merely wanted to sound a reminder and cautionary warning about large punitive damages, in hopes of reining in excessive verdicts yet still allowing lower courts significant flexibility in applying the principles to each specific case, then that much appears to have been accomplished. There is a cost to such flexibility, though, as it allows for considerable variations in interpretation and application of the Supreme Court’s guidance, resulting in inconsistent and unpredictable outcomes from court to court.

That more limited goal, though, would not seem to be the true intent of the Supreme Court majority. As the court specifically chose to return to an issue that it had addressed only a few years earlier, and then reiterated its prior ruling in Gore in stronger wording, it is more probable that the majority’s desire was to reduce most, if not all, punitive awards that exceed a single-digit ratio, and to force many such awards down to only two or three times the compensatory damages. If that indeed was the court’s purpose, State Farm has not yet accomplished that, and is not likely to do so without additional action from the high court.

Several avenues are available to the Supreme Court should it choose to act again on punitive damages. One option would be to reiterate its message by rejecting the Utah Supreme Court’s reduction to a 9-to-1 ratio in the specific case on remand, forcing an even greater cut in that award. More likely, the court in the next few years (after a clearer pattern has developed among lower courts interpreting State Farm) will choose to review yet another punitive damages award. A new case could result in even more specific guidance along the same lines, or instead could branch out in new directions, such as by analyzing the wording of jury instructions needed to enforce State Farm. The justices might even need to reconsider the basic three-guidepost approach, as the reprehensibility factor allows lower courts significant leeway in interpretation, while the comparable civil sanctions guidepost has been little used. Although it is unlikely that the court will overcome its long-standing reluctance to impose a bright-line test on punitive awards, that might ultimately be necessary to ensure full compliance with the court’s intent. Whether these approaches or yet others are used, the Supreme Court most likely has not completed its efforts to restrain excessive punitive damages.
Footnotes

2 “This case is neither close nor difficult,” Justice Kennedy wrote. Id. at 419.
4 Id. at 574-75.
5 State Farm, 538 U.S. at 419.
6 Id. at 423.
7 Id. at 428.
8 “Here, we need not dwell long on this guidepost,” the majority opinion stated. Id.
9 Id. at 425.
10 Id.
11 Id.
12 Id.
13 Id.
14 Id. at 427.
17 State Farm, 538 U.S. at 429.
18 Id.
19 Campbell, 2004 UT 34, ¶ 35.
20 Id. at ¶ 39.
24 Id. at 763.
27 Id. at 1085.
33 Simon v. San Paolo U.S. Holding Co., 11 Cal. Rptr. 3d 510 (2004). The California Supreme Court has also agreed to review Johnson v. Ford Motor Co., 2003 Cal. App. Unpub. LEXIS 11038 (5th App. Dist. 2003). That case, based on the state lemon law, had produced a $10 million punitive verdict against Ford, although the compensatory damages were only $17,811 (for a ratio of 561 to 1). The California Court of Appeal (the same district that ruled on the Ford Bronco case) slashed the punitive award to only $53,435, applying a 3-1 ratio.
35 Id. at 562.
36 Id.
38 Id. at 1372.
41 Lincoln v. Case, 340 F.3d 283 (5th Cir. 2003).
42 IGEN Int’l, Inc. v. Roche Diagnostics GmbH, 335 F.3d 303 (4th Cir. 2003).
45 Asa-Brandt, Inc. v. ADM Investor Servs., 344 F.3d 738 (8th Cir. 2003).
46 Williams v. Kaufman County, 352 F.3d 994 (5th Cir. 2003).
In addition, some portions of this paper relied in part on a preliminary, unpublished paper by the author, “The Supreme Court Has Spoken on Large Punitive Damages -- But Are the Lower Courts Listening?,” presented at the Pacific Southwest Academy of Legal Studies in Business conference in February 2004.