Hello product liability law enthusiasts!

Thanks to all of who responded positively to my initial e-mail (update #1). As to those receiving this e-mail who didn't respond, I'm keeping you on the list for now just in case you would like to receive these updates but haven't had a chance to tell me so. If that's the case, please let me know by reply e-mail.

In my initial e-mail I reported to you on the U.S. Supreme Court decision in **State Farm Mutual Insurance v. Campbell,** a non-product liability case holding that "few [punitive damages] awards exceeding a single-digit ratio" to compensatory damages awarded would withstand constitutional due process scrutiny. While I assumed that the Supreme Court's reasoning would also apply in product liability cases, immediately following the **State Farm** decision a spirited debate began among product liability lawyers as to whether in fact it would apply. The rationale for non-application largely turned on the difference between economic injury (as in **State Farm**) and personal injury (as in most product liability cases). One of the factors to be considered in determining the amount of punitive damages, according to the **State Farm** decision, is the "reprehensibility" of the defendant's conduct. Plaintiffs lawyers have argued that conduct which causes personal injury or death is more reprehensible than conduct which "only" causes economic harm and therefore **State Farm's** single-digit bright line shouldn't apply.

I'm pleased to report that early indications are that **State Farm's** holding will apply to product liability cases. First, several weeks after its **State Farm** ruling, the Supreme Court remanded two product liability cases to lower courts "for further consideration in light of **State Farm**." Defendants in these cases were a fish bowl (allegedly defective because it could break when filled with water) manufacturer and a pharmaceutical manufacturer of an asthma drug. Both were on the losing end of punitive damage awards exceeding ten times compensatory damages. Thus, the Supreme Court itself seemed to be indicating that it meant **State Farm's** reasoning to apply to product liability cases.

Second, a federal trial court judge in Alabama (a notoriously difficult jurisdiction for product liability defendants) reduced a $1 million punitive damages award against Metabolife, the manufacturer of a diet pill, to $450,000 in a case where compensatory damages of $50,000 were awarded. The judge felt that the 9-1 ratio was appropriate because there was "a substantial evidentiary basis for the jury's finding that ephedra and caffeine in combination is a compound that is too dangerous to be sold to the general public, and that knowingly marketing it was a tort that deserved punishment." The jury also had ample evidence to find that the product label's representation of independent testing was false.

I'll keep you informed about other significant punitive damages developments. Thanks for reading.

Best regards.

Remy

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