



COMPLIMENTARY SEMINAR

Free Seminars are available covering topics including:

- Anatomy of a Lawsuit
- Premises Liability (including Slip-and-Fall)
- Wrongful Death
- Minor Rear-End Automobile Accidents
- Accident Reconstruction
- Fraud
- Bad Faith
- Copyright/Trademark Infringement
- Advertising Injury
- Sexual Harassment and Racial Discrimination

For a list of additional topics, please visit our Website at www.cwllaw.com. Please note we will present the seminar in your office, in one of our offices, or we will reserve a conference room in the geographical area that you want the seminar presented. To schedule a free seminar, please contact James A. Rossi at (818) 591-2285 ext. 304 or Rossij@cwllaw.com.

TRIAL ATTORNEY PROFILE: LINDY



Lindy Fried is a senior associate in our Los Angeles County office. Lindy has litigated cases in the areas of premises liability and auto accidents since joining the firm. In 2003, Lindy tried two cases. First, she defended a claim for personal injuries arising out of a slip and fall accident. Lindy argued, in addition to disputed liability,

that plaintiff had exaggerated her claims of injury. At the close of trial, plaintiff was awarded \$12,000. The award was \$87,000 less than Lindy's corporate client's pre-trial statutory settlement offer, which entitled Lindy's client to its defense costs and required plaintiff to pay instead of receive money. Second, Lindy tried a case wherein a wife and husband were alleging very serious personal injuries and damages in excess of 2.5 million dollars as a result of an accident. The jury awarded the wife \$11,000, and rendered a defense verdict against the husband, which entitled Lindy's client to its defense costs.

In addition to litigation, Lindy handles post-trial collection for the firm.

Lindy's other areas of expertise include medical malpractice and products liability.

CASE SUMMARIES - LEGAL ANALYSIS

PUNITIVE DAMAGES IN CALIFORNIA

In cases such as *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), *Cooper Industries Inc. v. Leatherman Tool Group Inc.*, 532 U.S. 424 (2001), and *BMW of North America Inc. v. Gore*, 517 U.S. 559 (1996), the Supreme Court has set forth analytical principles, under the Due Process Clause of the 14th Amendment, that appear to sharply curtail awards of punitive damages. For instance, the court in *Campbell* essentially advocated a single-digit cap on compensatory-to-punitive-damages ratios, which has the potential to severely restrict the size of punitive damages awards.

However, two recent appellate cases demonstrate the unpredictability and lack of consensus at the appellate level when it comes to punitive damages. The first of these cases is *Textron Financial Corp. v. National Union Fire Ins. Co.*, (2004) 118 Cal.App.4th 1061. In *Textron*, an insurer was found to have committed fraud and a breach of the covenant of good faith and fair dealing based on the acts of its agents. The jury awarded the plaintiff \$165,000 in compensatory and \$10 million in punitive. The trial

court reduced the punitive damages to \$1.7 million. The 4th District reduced the punitive damages to \$360,000, but otherwise affirmed the judgment. In *Bardis v. Oates*, (2004) 119 Cal.App.4th 1, the 3rd District Court of Appeal dealt with a judgment for the plaintiff on claims of fraud and self-dealing by a principal in a real estate partnership. The jury awarded the plaintiff \$165,000 in compensatory and \$7 million in punitive damages. On appeal, the 3rd District reduced the punitive damages to \$1.5 million.

It is interesting to note that while both cases had identical compensatory damage awards, the punitive damages in *Bardis* were four times that of *Textron*. In *Textron*, the court deducted the breach of contract damages (\$75,000) from the total damages amount before applying the punitive-damages ratio, ruling that only tort damages could provide the proper basis for a punitive damages award. The *Textron* court then multiplied this amount (\$90,000) by four based on the fact that the amount of compensatory damages was not too high or low and defendant's conduct was not exceptionally extreme nor trivial, quoting *Diamond Woodworks Inc. v. Argonaut Ins. Co.*, (2003) 109 Cal.App.4th 1020.

On the other hand, the court in *Bardis* included

calculation. Thus, the entire \$165,000 compensatory award went into the calculation based on the reasoning that the amount the jury found to be the total amount of damages suffered by the plaintiffs most closely reflects the U.S. Supreme Court's formulation of the actual harm as determined by the jury. The *Bardis* court then used a multiplier of just over nine as within the single-digit mandate of *Campbell* to punish defendants' fraudulent and deceptive conduct and deter such future conduct. The *Bardis* court expressly rejected the 4-1 ratio from *Diamond Woodworks*.

The primary difference between the two calculations is the base compensatory figure calculation as well as the multiplier used by each court. Ultimately, each court chose a different method and line of authority to follow in calculating the punitive damages. Overall, *Textron's* more limited approach to the proper measure of compensatory damages used in the punitive damages calculation should benefit defendants, while *Bardis's* more expansive scope will be more attractive to plaintiffs.

The Chronicle is prepared by James A. Rossi, Esq. of our Calabasas Office. For questions regarding The Chronicle, please contact James A. Rossi, Esq., at 818-591-2285 or Rossij@cwllaw.com. Upon request, copies of any legal authority cited in The Chronicle are available.

The Chronicle Newsletter

CRANDALL, WADE & LOWE

A Professional Corporation

23901 Calabasas Rd., Suite 1020

Calabasas, CA 91302

(818) 591-2285

ADDRESS SERVICE REQUESTED

Presorted
Standard
U.S. Postage Paid
Canoga Park, CA
Permit No. 231

ADVERTISEMENT