

A Brief Analysis of Punitive Damages Issues Considered in *White v. Ford Motor Co.*

News

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On December 3, 2002, the U.S. Court of Appeals for the Ninth Circuit announced its decision in *White v. Ford Motor Co.* This case involved product liability allegations relating to the design of the parking brake in a 1993 Ford Pick-up truck, as well as claims of a post-sale duty to warn.

Walter White, a three-year-old boy, was playing inside a vehicle parked on an incline with the parking brake set. Somehow, the gear shift lever was moved into neutral and the parking brake did not hold. As the vehicle rolled, Walter fell out and was fatally injured.

Plaintiffs contended that a design defect created the possibility that the parking brake could spontaneously disengage if the vehicle was jarred, perhaps by the slamming of a door. They introduced evidence from which they argued that Ford had received from customers numerous reports that these trucks had rolled despite engagement of the parking brake.

They also introduced evidence from which they argued that Ford's internal investigators recognized - at least preliminarily - the existence of a design-related problem with the parking brake that could allow vehicles parked on an incline to roll.

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Ford initially notified dealers of an appropriate “fix” to the parking brake, but indicated that it should be installed only if the customer complained. Following discussions with the National Highway Traffic Safety Administration, however, Ford decided to recall all of the affected vehicles.

Unfortunately, the White accident occurred just a few weeks before the recall mailing was issued.

The jury found in favor of the plaintiffs and awarded \$2,305,435 in compensatory damages and \$150,884,400 in punitive damages. The district court remitted the punitive damages to \$69,163,037.10 in post-trial proceedings.

In a 2-1 decision, the Ninth Circuit reversed the punitive damages judgment and remanded the case for a new trial on the amount of the punitive damages award. The court found that the evidence introduced at trial was sufficient under Nevada law to support a verdict imposing punitive damages. The majority did not reach the issue of excessiveness, although the dissent gave it considerable attention.

The majority focused on extraterritoriality and used this as the basis for reversing the punitive damages judgment. The court noted that the jury was encouraged during plaintiffs’ impassioned closing argument to award punitive damages for Ford’s wrongs to the entire country and that the district court refused to instruct the jury that it could address only the wrongs done in Nevada. The majority found that this combination of facts demonstrated that the jury “was permitted to engage in a due process violation of the most basic sort when it arrived at its punitive damages award.”

The majority determined that extraterritoriality is a separate and independent due process concern that cannot be overlooked, even when the size of the award is not unconstitutionally excessive. Extraterritoriality considerations do not disappear if the wrongful conduct at issue is unlawful in other states. In support of this point, the majority noted that state-to-state variations in punishment policies must be

considered, and that the possibility that a harsh punitive damages verdict in one state could produce overdeterrence affecting another state must be avoided.

The opinion fulfilled the promise of *BMW v. Gore*'s extraterritoriality discussion by reversing a jury verdict in a personal-injury lawsuit based largely on overreaching tactics employed by plaintiffs' counsel during closing argument.

Even the dissent found the punitive damages award improper. Although disagreeing with the majority's due process analysis, and seeing no due process requirement that the jury be instructed to place territorial limits on any punitive damages award, the dissent found that the jury's award was constitutionally excessive.

In examining the various *BMW* factors, the dissent noted the argument that comparable statutory civil sanctions impose a maximum fine of less than \$1 million. The dissent also recognized that the ratio of compensatory-to-punitive damages was rather high, especially in the context of recent product liability verdicts against Ford. Ultimately, the dissent concluded that the constitutional limit on the punitive damages award was ten times the compensatory damages found by the jury.

The *White* decision should produce substantial benefit to product liability defendants. It provides considerable ammunition to defendants seeking to limit their exposure to large punitive damages awards. The ruling also stands as a caution against overreaching arguments by plaintiffs' counsel.