

# LITIGATION SUB-LAW

## NEWSFLASH



August 30, 2013

### Litigation Sub-Law Section of the ADCNCN

#### **Nickerson: California court upholds 10:1 ratio limit on punitive damages**

California appellate courts continue to impose limits on punitive damages. On August 29, a 10-1 limit on punitive damages was upheld. In *Nickerson v. Stonebridge Life Ins. Co.* (link below), the jury awarded plaintiff \$35,000 in damages for bad faith insurance denial of benefits and \$19 million in punitive damages. The trial court remitted the amount to \$350,000, and the court of appeal upheld the lowered amount. This is consistent with United States Supreme Court rulings that “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages ... will satisfy due process.” (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 425.)

The court identified multiple factors in concluding that the defendant’s conduct was particularly deserving of punitive damages. Defendants in cases not involving these factors should be able to argue that a lower multiple than 10-1 should apply if they are unfortunate enough to face a punitive award at all.

First, the defrauded plaintiff was a disabled, wheelchair-bound vet, living off a “very small military pension” and serving as live-in caregiver to other vets in exchange for rent-free space.

Second: “In addition to its treatment of Nickerson, the record reveals Stonebridge’s indifference to the health and safety of others through its practice of using the hidden ‘Necessary Treatment’ limitation to deny other policyholders’ claims and by preventing full communication between peer reviewers and treating physicians.”

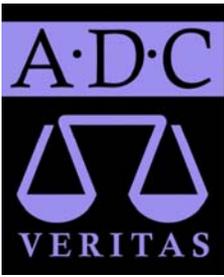
Third: “In the punitive damages phase of trial, the court instructed the jury that Stonebridge failed to comply with two orders to produce documents. This instruction was the result of Stonebridge’s defiance of two court orders to produce its so-called ‘Blue Forms,’ the internal forms Stonebridge used when denying claims so as to comply with the California Fair Claims Practices Act.”

The record in this case involved a particularly unfortunate trifecta: a particularly vulnerable plaintiff, a widespread practice of deception, and disobedience of court discovery rulings. This may be why the court of appeal simply affirmed the remittitur at a 10:1 ratio rather than limiting punitive damages even further. (See

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## N E W S F L A S H



*Roby v. McKesson* (2010) 47 Cal.4th 686, 717 [limiting punitive damages to 1-1 ratio to compensatory damages in a case involving physical harm (not an issue in *Nickerson*) and a vulnerable victim].)

In dissent, Justice Croskey is a friend of the insurer in this case, and would have held that there was no basis for punitive damages.

The full opinion can be viewed at: <http://www.courts.ca.gov/opinions/documents/B234271.PDF>

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