

## California Supreme Court Clarifies When *Brandt* Fees May Be Considered In Determining If A Punitive Damages Award Is Unconstitutionally Excessive

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*Nickerson v. Stonebridge Life Ins. Co.*, 63 Cal. 4th 363 (2016)

Categories: Bad Faith – *Brandt* Fees – Constitutional Limits on Punitive Damages

In determining if a punitive damages award is unconstitutionally excessive in light of compensatory damages, is an award of attorneys' fees under *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), properly included as compensatory damages where the fees are awarded by the jury, but excluded when they are awarded by the trial court after the jury has rendered its verdict? In *Nickerson v. Stonebridge Life Insurance Co.*, the California Supreme Court held that *Brandt* fees are properly included as compensatory damages in either event.

In *Nickerson v. Stonebridge Life Insurance Co.*, an insured sued an insurer for allegedly refusing in bad faith to pay all benefits owed under an indemnity benefit policy for the full length of his hospital stay. The trial court awarded the insured \$31,500 in unpaid policy benefits by way of a directed verdict. The jury then determined that the insurer had acted in bad faith and awarded the insured \$35,000 for emotional distress and \$19 million in punitive damages. Before trial, the parties had agreed that the trial court would determine any *Brandt* fees – *i.e.*, attorney's fees incurred to secure any benefits tortiously withheld – and so no evidence concerning those amounts was presented to the jury. After the jury rendered their verdict, the parties stipulated to \$12,500 as the amount the insured was entitled to as *Brandt* fees and the trial court awarded that amount.

The insurer moved for a new trial in order to seek a reduction of the punitive damages award. The trial court conditionally granted the motion unless the insured consented to a reduction of the punitive damages to \$350,000. In determining the permissible amount of punitive damages, the trial court did not include the *Brandt* fees in its analysis. On appeal, the California Court of Appeal held that the *Brandt* fee award was properly excluded from the assessment because it came after the jury's verdict, citing *Amerigraphics, Inc. v. Mercury Casualty Co.*, 182 Cal. App. 4th 1538 (2010). The California Supreme Court, however, held that such *Brandt* fees may properly be considered, and disapproved *Amerigraphics* to the extent it is inconsistent with its holding.

The California Supreme Court began with the underlying concern: “The due process clause of the Fourteenth Amendment to the United States Constitution prohibits states from imposing ‘grossly excessive’ punitive damages awards” and, “[a]bsent special justification, ratios of punitive damages to compensatory damages that greatly exceed 9 or 10 to 1 are presumed to be excessive and therefore unconstitutional.” In further discussing the guideposts that courts apply in determining whether a punitive damages award is grossly excessive, the California Supreme Court rejected the conclusion that only compensatory damages presented to the jury count. Rather, the court reasoned, because the “guideposts are designed to govern postverdict judicial review of the amount of a jury’s award, not the adequacy of the jury’s deliberative process, there is no apparent reason why a court applying [this] guidepost may not consider a postverdict compensatory damages award in its constitutional calculus.”

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