

# The Legal Intelligencer

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A Philadelphia lawyer who won a verdict of \$52 million in punitive damages in a suit against Ford Motor Co. in federal court in Nevada last week said he is confident that the award will be upheld on appeal because it satisfies the U.S. Supreme Court's most recent pronouncement on exclusiveness in punitive awards.

It was the second trial of the case *White v. Ford*, for plaintiffs; attorney [Shanin Specter](#) of Kline& Specter, who in 1988 won a verdict that included \$150 million in punitive damages for the family of a young Nevada boy who was killed when a Ford pickup truck rolled over him because of a defective parking brake.

The trial judge later reduced the punitive award to \$69 million, but the 9th U.S. Circuit Court of Appeals concluded that the jury instructions on the punitives issue was flawed and ordered a new trial limited to assessing the punitive award.

Unaffected by the appeals court's ruling was the jury's award of \$2.3 million in compensatory damages. On the last day of the first trial, Ford's co-defendant, Orschein Co. a manufacturer of the parking brake, settled with the Whites for a little more than \$2 million.

After last week's \$52 million verdict, Ford spokeswoman Kathleen Vokes in Dearborn, Mich., said the company plans to appeal.

"This was a tragic case but Ford believes that today's result is inconsistent with recent constitutional decisions of the U.S. Supreme Court," she said, apparently referring to the high court's decision last year in *State Farm Mutual Automobile Insurance Co. v. Campbell*.

But Specter said that the *State Farm* decision had been "over read" and that an examination of the case shows that the \$52 million award to the Whites is likely to be upheld.

In *State Farm*, the justices declined to impose a bright-line ratio that a punitive damages award cannot exceed, but they overturned an award of \$145 million in punitives where the plaintiff was awarded just \$1 million in compensatory damages.

But Specter said the precise language of the most critical sentence in *State Farm* shows that the high court included flexibility.

Justice Anthony Kennedy wrote: "In practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."

Specter said the sentence includes two phrases -- "a few awards" and "to a significant degree" -- that allow for exceptions to the general rule.

The State Farm decision went on to say, Specter said, that cases of personal injury and death were more likely to qualify for larger punitive awards than those where the harm was purely economic, as it had been in State Farm.

Specter's clients, Jimmie and Ginnie White of Elko, Nev., claimed in the suit that Ford knew about the parking brake defect but didn't warn consumers.

The White's 3-year-old son, Walter, was killed in October 1994 -- a week before his fourth birthday.

A month after the boy died, Ford recalled 884,000 of the 1992-94 F-series pickup trucks and Broncos, 1993-94 Ranger pickups, Explorers and Mazda Navajo sport utility vehicles to repair the parking brake mechanisms.

But Specter said the recall notice told consumers that the only problem with the brakes was that they sometimes would fail to engage initially.

"Ford did not say that after the brake had been engaged it later could disengage spontaneously for no reason. They told the public the reason for recall was a different, much less significant problem," Specter said.

Specter said the 9th Circuit accurately predicted one of the holdings in *State Farm* when it ordered a new trial on punitive damages in the Whites' case.

The 9th Circuit panel concluded that the trial judge had erred in his jury instructions by failing to tell the jury that it was allowed to consider conduct outside the state of Nevada only for the purpose of assessing how reprehensible Ford's conduct was, but that in assessing the size of the punitive award, it must limit its consideration to harm done to Nevada residents.

In the new trial, Specter said, the jury was properly instructed and returned a verdict of \$52 million in punitive damages after hearing that Ford has a net worth of \$11.6 billion.

Specter said that in his closing argument, he took out a \$10 bill and asked the jury to imagine that it represented Ford's net worth. He then took out a penny, he said, and told the jury that if it awarded just that amount in punitives -- one-tenth of 1 percent -- Ford would simply "thumb its nose" at the verdict.

Instead, Specter suggested that the jury take away a dime -- 1 percent.

The verdict of \$52 million, Specter said, was "roughly a nickel."

"I think it is a reasonable and modest number, under the circumstances," Specter said.

Evidence at trial showed that there have been more than 1,100 incidents in which Ford trucks' parking brakes have disengaged spontaneously, resulting in 54 injuries and one death -- Walter White.

The Whites received the recall notice in March 1995, long after their son had climbed into their 1993 Ford F-350 pickup truck and fallen or jumped out. He went under the wheel as it rolled down their driveway.

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