

## Is the glass half full or half empty? California Court of Appeal revisits emotional distress claims, attorneys fees, and punitive damages in insurance "bad faith" cases

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### Major v. Western Home Insurance Company (Cal. Ct. App., 1/6/09)

The California Court of Appeal recently affirmed a jury verdict holding a property insurer liable for slightly over \$1.3 million, including almost \$650,000 in punitive damages. While that decision is not good news for the insurer, there's much in the Court's opinion that may be helpful to insurers in other cases.

The case arose from the October, 2003 Cedar Fire, which destroyed Mr. and Mrs. Majors' home and all of their personal belongings in the house. Their property insurer, Western Home, paid most of the claim, but issues arose concerning the personal property claim, and concerning the policy limits applicable to the swimming pool and spa. There was also apparently some confusion over the proper policy limit for the home under the "extended replacement cost" provision of the policy. By the time the jury was empanelled, all of the policy benefits for the real property had been paid, but there remained a dispute over personal property – for which the jury ultimately awarded \$31,359.55. That relatively nominal award grew, though, when the jury added \$450,000 for emotional distress damages, \$189,000 in attorney fees, and \$646,471.53 in punitive damages. The Court of Appeal opinion contains important holdings on all of these components of the verdict.

The decision reaffirms the rule that emotional distress damages are only recoverable as "incidental" damages "flowing from" the breach of contract. Consequently, they "must be tied to actual...economic loss," and "delayed payment of benefits, standing alone, without resulting economic damages, is insufficient to support an award of emotional distress damages." Building on that rule, the Court went on to explain that even after a threshold showing of economic harm is made, "the *amount* of emotional distress damages is still tied to the amount of economic damages." That is because the emotional distress damages are only recoverable as an aggravation of the financial harm. The Court compared the \$450,000 in emotional distress damages to the jury's award of \$220,359.99 for attorneys fees and lost personal property, and found it to bear a "reasonable relationship."

The verdict for attorneys fees was based on trial testimony from plaintiffs' counsel in which he allocated between time devoted to the breach of contract claims and time which could not be segregated. He also testified concerning allocation of costs to the contractual claims, and about the reasonableness of the hourly rate he requested. Rejecting Western's challenge, the Court of Appeal held that counsel's testimony provided substantial evidence sufficient to support the jury's award.

Finally, with respect to punitive damages, the Court of Appeal found that the claim administrator and its employees – who Western conceded were its agents for purposes of *respondeat superior* liability for tort damages – were also *managing* agents for purpose of punitive damages. In reaching that conclusion, the Court endorsed the continuing vitality of the standard enunciated by the California Supreme Court in 1979 in *Egan v. Mutual of Omaha* and rejected Western's argument that the 1980 amendments to Civil Code § 3294 limited corporate

responsibility for punitive damages. Citing and relying on *Egan*, it held that "claim managers that exercise substantial discretionary authority to pay or deny claims" are managing agents for purposes of punitive damages liability.

Because this decision is new, it remains to be seen whether Western will seek review from the California Supreme Court, and if so, whether its petition will be granted. If the decision stands unchanged, though, we can confidently predict that both policy holders and insurers will turn to it for support in future "bad faith" litigation. Policy holders will point to the substantial amount of the award resulting from the delays and errors in the claim adjustment process, and to an insurer's potential exposure to punitive damages based on the conduct of third parties; insurers will look to the language limiting entitlement to emotional distress damages, and endorsing the use of detailed testimony concerning attorney fees.