

Excerpt from *Campbell v. State Farm Mutual Automobile Insurance Company*, 65 P.3d 1134 (2001):

“2. The Nature of State Farm’s Misconduct

[20][21][22] ¶ 27 This factor specifically analyzes the nature of the defendant’s conduct in terms of its maliciousness, reprehensibility, and wrongfulness. It mirrors the “reprehensibility” factor described by the United States Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). There, the Supreme Court stated that the defendant’s misconduct is “[p]erhaps the most important indicium of the reasonableness of a punitive damages award.” *Id.* at 575, 576, 116 S.Ct. 1589. Repeated “trickery and deceit” targeted at people who are “financially vulnerable” is especially reprehensible and worthy of greater sanctions. *Id.* Moreover, “deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive” also warrant larger awards. *Id.* at 579, 116 S.Ct. 1589.

[23] ¶ 28 With these standards clearly in mind, the trial court made nearly twenty-eight pages of extensive findings concerning *1148 State Farm’s reprehensible conduct. We summarize here three examples from those findings of State Farm’s most egregious and malicious behavior.

¶ 29 First, State Farm repeatedly and deliberately deceived and cheated its customers via the PP & R scheme. See Court’s Findings, Conclusions and Order Regarding Punitive Damages and Evidentiary Rulings, *Campbell*, at 17-27. For over two decades, State Farm set monthly payment caps and individually rewarded those insurance adjusters who paid less than the market value for claims. *Id.* at 18-19. Agents changed the contents of files, lied to customers, and committed other dishonest and fraudulent acts in order to meet financial goals. *Id.* at 17-27. For example, a State Farm official in the underlying lawsuit in Logan instructed the claim adjuster to change the report in State Farm’s file by writing that Ospital was “speeding to visit his pregnant girlfriend.” *Id.* at 35. There was no evidence at all to support that assertion. Ospital was not speeding, nor did he have a pregnant girlfriend. *Id.* The only purpose for the change was to distort the assessment of the value of Ospital’s claims against State Farm’s insured. As the trial court found, State Farm’s fraudulent practices were consistently directed to persons-poor racial or ethnic minorities, women, and elderly individuals-who State Farm believed would be less likely to object or take legal action. *Id.* at 26-27.

¶ 30 Second, State Farm engaged in deliberate concealment and destruction of all documents related to this profit scheme. *Id.* at 31-33. State Farm’s own witnesses testified that documents were routinely destroyed so as to avoid their potential disclosure through discovery requests. *Id.* at 29-30. Such destruction even occurred while this litigation was pending. *Id.* at 30. Additionally, State Farm, as a matter of policy, keeps no corporate records related to lawsuits against it, thus shielding itself from having to disclose information related to the number and scope of bad faith actions in which it has been involved. *Id.* at 30.

¶ 31 Third, State Farm has systematically harassed and intimidated opposing claimants, witnesses, and attorneys. *Id.* at 33-37. For example, State Farm published an instruction manual for its attorneys mandating them to “ask personal questions” as part of the investigation and examination of claimant in order to deter litigation. *Id.* at 34. Several witnesses at trial, including Gary Fye and Ina DeLong, testified that these practices had been used against them. *Id.* at 34-35. Specifically, the record contains an eighty-eight page report prepared by State Farm

regarding DeLong's personal life, including information obtained by paying a hotel maid to disclose whether DeLong had overnight guests in her room. *Id.* at 35. There was also evidence that State Farm actually instructs its attorneys and claim superintendents to employ “mad dog defense tactics”—using the company's large resources to “wear out” opposing attorneys by prolonging litigation, making meritless objections, claiming false privileges, destroying documents, and abusing the law and motion process. *Id.* at 36-37.

¶ 32 Taken together, these three examples show that State Farm engaged in a pattern of “trickery and deceit,” “false statements,” and other “acts of affirmative misconduct” targeted at “financially vulnerable” persons. [BMW, 517 U.S. at 575, 576, 116 S.Ct. 1589](#). Moreover, State Farm has strategically concealed “evidence of [its] improper motive” to shield itself from liability, which was furthered by State Farm's treatment of opposing witnesses and counsel. [BMW, 517 U.S. at 579, 116 S.Ct. 1589](#). Such conduct is malicious, reprehensible, and wrong.

¶ 33 State Farm responds by arguing in its brief that even if its conduct was wrong, it does not “after all, involve murder, torture, or deliberate poisoning of the environment,” and thus cannot warrant millions of dollars in punitive damages. Additionally, State Farm argues that under *Crookston II*, willful calculated fraud was not sufficient to justify a higher than ordinary ratio of punitive to compensatory damages. [Crookston II, 860 P.2d at 940](#).

¶ 34 State Farm fails to realize that, while *Crookston II* held that fraudulent conduct *alone* was insufficient to justify a large punitive damage award, it also observed that fraud combined with other factors justifies a *1149 higher award. [Id. at 940-41](#). Specifically, *Crookston II* stated that “an additional unique factor justifying the punitive award, both in its dollar amount and in its proportion to the hard compensatory damages [is] ... the company's ‘calculated and calloused attitude’ toward settling valid claims.” [Id. at 941](#) (citation omitted). In this case, the jury was convinced, and the evidence shows, that State Farm engaged in a widespread pattern of fraud. Moreover, the evidence of its PP & R scheme demonstrates that State Farm specifically calculated and planned to avoid full payment of claims, regardless of their validity. Thus, the nature of State Farm's conduct supports the imposition of a higher than normal punitive damage award.

3. Facts and Circumstances Surrounding State Farm's Misconduct

[\[24\]\[25\]](#) ¶ 35 This factor looks to the circumstances surrounding the illegal conduct, particularly with respect to what the defendant knew and what was motivating his or her actions. *See Bundy v. Century Equip. Co., 692 P.2d 754, 759 (Utah 1984)*. Discussing this point, the trial court referred to its previous analysis of State Farm's conduct and stated “those facts speak for themselves with respect to the type of insensitive and callous behavior exhibited by State Farm.” In addition to the trial court's findings, we note that State Farm refuses in its brief on appeal to concede any error or impropriety in the handling of the Campbell case. Rather, testimony at trial indicated that State Farm was “proud” of the way it treated the Campbells. *Id.* Further, State Farm asserts that it is in fact a “victim” in this case because it is the target of a secret “conspiracy” perpetrated by the Campbells, Ospital, Slusher, and their attorneys to bring this bad faith lawsuit and to share any recovery obtained.

¶ 36 Even if we agreed with State Farm's characterization of the agreement between the plaintiffs and Ospital and Slusher, we are unable to comprehend State Farm's logic. No behavior by those parties operates to excuse State Farm's dishonest and illicit practices over the course of many years, nor its treatment of the Campbells. In fact, without this so-called “conspiracy,” which

contains no illegal elements whatever, State Farm's wrongdoing would have remained unexamined and unpunished, and the direct harm to the Campbells, the indirect harm to the other parties, and the harmful effect on the larger community of all those who deal with the company, would have had no remedy. The facts and circumstances surrounding State Farm's misconduct all point to a scheme motivated by the goal of making a profit by any means necessary. We agree entirely with the trial court's conclusion that this factor supports the imposition of a higher than normal punitive damages award.

4. Effect of State Farm's Misconduct on the Campbells and Others

[\[26\]](#) ¶ 37 This factor examines how the defendant's conduct affected other people as well as the Campbells. The larger the number of people affected, the greater the justification for higher punitive damages.

[\[27\]](#) ¶ 38 Here, the effect of State Farm's conduct on the Campbells is well-documented. In particular, the Campbells lived for nearly eighteen months under constant threat of losing everything they had worked for their whole lives. This threat led to sleeplessness, heartache, and stress in the Campbells' marriage and family relationships. *Id.* State Farm argues that these were relatively minor impacts, and were not as severe as those punished in *Crookston II*, and additionally, that the alleged harms suffered by other State Farm customers cannot be considered in this case.

[\[28\]](#) ¶ 39 Even if the harm to the Campbells can be appropriately characterized as minimal, the trial court's assessment of the situation is on target: "The harm is minor to the individual but massive in the aggregate." Moreover, State Farm's assertion that the trial court erred in considering alleged harms suffered by other customers is incorrect; *Crookston II* specifically allows courts to consider the effect of the defendant's conduct on others. [Crookston II, 860 P.2d at 941](#). In fact, the *Crookston II* court justified a high punitive damage award based on the fact that the insurance company's fraudulent *1150 practices were inflicted on countless customers. *Id.*

¶ 40 In the present case, State Farm's conduct seriously affected the Campbells, as indicated previously, as well as many others. In particular, State Farm's conduct corrupted its employees by forcing them to engage in deceptive practices or lose their jobs. Moreover, State Farm's continuing illicit practice created market disadvantages for other honest insurance companies because these practices increased profits. As plaintiffs' expert witnesses established, such wrongfully obtained competitive advantages have the potential to pressure other companies to adopt similar fraudulent tactics, or to force them out of business. Thus, such actions cause distortions throughout the insurance market and ultimately hurt all consumers. *Id.* Because State Farm's actions have such potentially widespread effects, this factor supports a high punitive damages award."