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IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL, Plaintiffs, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.	COURT'S FINDINGS, CONCLUSIONS AND ORDER REGARDING PUNITIVE DAMAGES AND EVIDENTIARY RULINGS Civil No. 890905231 Judge William B. Bohling

1. The above matter came before the Court on June 4, 1996, for Phase II of the bifurcated trial. Following 29 days of trial, on July 31, 1996, the jury returned a special verdict in favor of plaintiffs, answering all interrogatories in their favor and awarding damages as follows: $1.4 million in general compensatory damages to plaintiff Curtis Campbell; $1.2 million in general compensatory damages to plaintiff Inez Campbell; and $145 million in punitive damages to plaintiffs jointly. On August 8, 1996, the Court entered judgment against State Farm in these amounts, together with special damages of $2,086.75 ($911.25 plus $1,175.50 in prejudgment interest) plus post-judgment interest at the legal rate until paid.

2. Defendant State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") then filed a variety of post-trial motions. Following exhaustive briefing of all issues, with several hundred pages of factual and legal argument submitted by each side, the Court held a two-day hearing on the motions on December 18-19, 1997. Having reviewed the parties' briefs, portions of the trial transcript and exhibits, and its own notes of the trial, at the conclusion of oral argument on each issue the Court issued a decision and preliminary bench opinion. The Court has set forth in separate orders its rulings with respect to the bulk of State Farm's motions.

3. The instant filing concerns State Farm's interrelated motions objecting to the punitive damages award and the scope of the evidence considered during Phase II. For the reasons stated below, the Court declines to grant most of the relief sought through these motions, but grants the aspect of State Farm's motion seeking a remittitur with respect to the amount of the punitive damages. For the reasons set forth herein, the Court has ordered that plaintiffs elect either a new trial or a remittitur of the punitive damages down to $25 million. The Campbells

have accepted a remittitur in this amount, in lieu of a new trial, through an election filed January 6, 1998. The Court sets out the basis of its rulings with respect to punitive damages in Part I. It sets out the basis of its rulings with respect to the scope of the evidence considered at trial in Part II.

I. MOTIONS RELATING TO PUNITIVE DAMAGES AWARD

4. State Farm makes essentially four arguments with respect to the jury's award of punitive damages: (1) that it is entitled to judgment n.o.v. as to liability; (2) that, in the alternative, it is entitled to a new trial because the jury was supposedly invited to punish it for all its bad acts throughout the nation during the past two decades; (3) that it is entitled to a new trial, or at least a remittitur, because the $145 million in punitive damages awarded by the jury is excessive; and (4) that, because supposedly the only explanation for the jury's award of $145 million is that the jury was inflamed by passion and prejudice, sparked by the allegedly inflammatory summation of the Campbells' counsel, only the grant of a new trial (not a remittitur) can cure this claimed defect.

5. For the reasons explained hereafter, the Court rejects the first, second and fourth arguments, but accepts the third in part. The Court sets forth its final findings and conclusions pertinent to the issues raised by State Farm as follows.

A. Motion for Judgment N.O.V. on Punitive Liability

6. State Farm argues for judgment n.o.v. on punitive damages on liability on the basis that, when it "had the opportunity to settle for policy limits but failed to do so, Utah law did not clearly recognize an action for bad faith failure to settle if the insurer ultimately paid the excess verdict in full," so that State Farm "manifestly lacked fair notice" that its course of action "could subject it not only to liability for compensatory damages under a bad faith theory, but also to punishment," thereby depriving it of due process of law. State Farm Opening Memorandum at 30-31. The Court denies this motion for several separate reasons.

7. First, the Court believes that this argument was waived by State Farm's failure to raise it in a Rule 50(a) motion for a directed verdict. See Pollesche v. Transamerican Ins. Co., 27 Utah 430, 433 n.1, 497 P.2d 236, 238 n.1 (1972) ("The failure of a party to make a motion for a directed verdict . . . forecloses the trial court from consideration of a motion for judgment notwithstanding the verdict"); see also First Gen. Servs. v. Perkins, 918 P.2d 480, 487 (Utah App. 1996).

8. Second, the Court believes that this argument is barred by the law-of-the-case doctrine, as the Court of Appeals, in its earlier consideration of the case, specifically held that the Campbells should be given an opportunity to prove their entitlement to punitive damages. Campbell v. State Farm, 840 P.2d 130, 142 & n.24 (Utah App. 1992).

9. Third, a due process objection based on the absence of notice is available, even in a criminal case, only where a court has announced "an unforeseeable judicial enlargement of a criminal statute, applied retroactively," that operates like an ex post facto law. Bouie v. City of Columbia, 378 U.S. 347, 350 (1964); see also Osborne v. Ohio, 495 U.S. 103, 117 (1990); Rose v. Locke, 423 U.S. 48, 53 (1975). State Farm's claim that it had no fair notice of possible punitive damages liability when it was handling the Campbell file in 1983 rests on an out-of-context quotation from the Court of Appeals' earlier decision in this case, namely, its observation that the existence of a bad-faith action despite the insurer's ultimate payment of the excess verdict was "one of first impression in Utah." Campbell, 840 P.2d at 137 (quoted in State Farm Opening Memorandum at 30). But the Court of Appeals went on to note that "prior Utah Supreme Court cases" dating as far back as 1969 (fourteen years before State Farm's refusal to settle the Campbell case) "compel the conclusion we reach," which the Court of Appeals described as "a natural outgrowth" of earlier precedents. Id. at 137, 140 n.19. Thus, even the Bouie test for fair notice in a criminal case is met here. Furthermore, State Farm's own documents indicate that it was aware well before its handling of the Campbell case of its potential punitive damage exposure for the mistreatment of its insureds.

10. Fourth and finally, even if State Farm's notice argument were accepted, by its terms it is limited to the argument that State Farm lacked notice that its bad faith toward the Campbells could lead to an award of punitive damages. The punitive damage award is separately supportable based on the other two intentional torts found by the jury: intentional infliction of emotional distress and fraud. State Farm does not contend that during its handling of the Campbell case it lacked fair notice that either of these intentional torts could lead to the imposition of punitive damages.

B. Motion for New Trial Based on Claim of Extraterritorial Punishment

11. State Farm argues that the jury was invited to punish it in this proceeding for all its bad acts committed nationwide during the past two decades, thus assertedly interfering with the sovereignty of other States and penalizing State Farm for activities that are possibly lawful in other States. State Farm Opening Memorandum at 89-97. According to State Farm, the only permissible remedy for this asserted flaw in the trial is a new trial, as "there is no way to determine what the jury would have done had it been limited to punishing State Farm for Utah conduct alone." State Farm Opening Memorandum at 94. The Court rejects this argument for three separate reasons.

12. First, this argument has been waived. State Farm raised no constitutional objection at trial against the testimony or statements in closing argument of which it now complains, as the Campbells have demonstrated, see Campbell Opening Memorandum at 173-75 & n.100, and State Farm concedes. See State Farm Reply Memorandum at 69 & n.35. (It should also be noted that not only did State Farm fail to raise a constitutional objection to any statements in the closing argument of plaintiffs' counsel, but State Farm made no objection of any kind to the particular statements of which it now complains).

13. Second, the Campbells never requested the jury to use this proceeding to punish State Farm for bad acts occurring outside of Utah. State Farm's suggestions to the contrary, see State Farm Opening Memorandum at 89-91, rely on out-of-context quotations from the Campbells' closing argument (it is worth noting that State Farm made no objection to the closing argument statements in question), as the Campbells set out in their brief in detail, see Campbell Opening Memorandum at 174-75 n.100. Compare BMW of North America, Inc. v. Gore, 116 S. Ct. 1589, 1593-94 (1996) (plaintiffs' counsel asked jury to punish BMW in the amount of $4,000 for each of approximately 1000 cars sold nationwide without disclosure of repainting, despite the fact that only fourteen such cars had been sold within Alabama, and nondisclosure was apparently lawful in most States).

14. Third and finally, ample precedent establishes that it was entirely proper for the jury to consider the Campbells' evidence of State Farm's wrongful claim-handling policies and practices, based on evidence from inside and outside Utah, both in evaluating the reprehensibility of State Farm's policies that led to the injuries suffered by the Campbells, and in deciding what amount of punitive damages was needed both to punish State Farm for its wrongful business policies in Utah and to deter the continuation of such policies in the future. See TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 450-51, 462 n.28 (1993) (plurality opinion) (observing that evidence that defendant "had engaged in similar nefarious activities in its business dealings in other parts of the country" was properly considered by the jury; "[u]nder well-settled law, . . . factors such as these are typically considered in assessing punitive damages."); BMW of North America, Inc. v. Gore, 116 S. Ct. 1589, 1598 nn. 19 & 21 (1996) (reaffirming TXO holding that "such [out-of-state] evidence is relevant to the determination of the degree of reprehensibility of the defendant's conduct," and noting that even "lawful conduct that bears on the defendant's character and prospects for rehabilitation" is properly considered in setting appropriate punishment). Even in the context of criminal sentences, where the interests of a defendant are greater than the interests of a defendant facing the imposition of punitive damages, see Pacific Mut. Life Ins. v. Haslip, 499 U.S. 1, 23 n.11 (1991); Browning-Ferris Indus. v. Kelco Disposal, Inc., 492 U.S. 257, 260 (1989), criminal penalties are routinely upheld despite being predicated on the consideration of out-of-state conduct, even where that conduct has not been adjudicated unlawful, and even where that conduct is in fact lawful. See, e.g., Williams v. New York, 337 U.S. 241, 247 (1949) ("fullest information possible concerning the defendant's life and characteristics" traditionally considered); United States v. Tucker, 404 U.S. 443, 446 (1972) (inquiry may be "broad in scope, largely unlimited either as to the kind of information [the court] may consider, or the source from which it may come."); Nichols v. United States, 114 S. Ct. 1921, 1928 (1994) (defendant's past criminal behavior may be considered, "even if no conviction resulted from that behavior"); United States v. Watts, 117 S. Ct. 633, 635 (1997) (per curiam) (trial judge is free to consider evidence of alleged offenses even where the defendant has already been acquitted by a jury on all the allegations, so long as trial judge believes that the offenses have been demonstrated "by a preponderance of the evidence").

Indeed, in its reply brief, State Farm explicitly acknowledged the controlling nature of this line of authority; agreed that it was not error for the jury to consider out-of-state evidence; and affirmatively noted that, if properly admitted under Utah R. Evid. 404(b), such evidence "may be considered in determining which amount [of punitive damages], within a range of reasonable punishments, the jury should select." State Farm Reply Memorandum at 70.

15. For all these reasons, the Court denies State Farm's motion for a new trial on this ground.

C. Motion for New Trial or Remittitur Based on Size of Punitive Damages Award

16. State Farm argues at length that it is entitled to a new trial, or at least a remittitur, because the $145 million in punitive damages awarded by the jury are excessive. See State Farm Opening Memorandum at 97-112. In support of this argument, State Farm relies primarily on the Utah Supreme Court's decisions in Crookston v. Fire Ins. Exch., 817 P.2d 789 (Utah 1991) ("Crookston I"), and Crookston v. Fire Ins. Exch., 860 P.2d 937 (Utah 1993) ("Crookston II"), and the U.S. Supreme Court's decision in BMW of North America v. Gore, 517 U.S. 559, 116 S. Ct. 1589 (1996). For the reasons set forth below, the Court finds that the punitive damages awarded by the jury were excessive and therefore has granted State Farm's motion for a remittitur (since accepted) or, in the alternative, for a new trial had the Campbells desired a new trial. As the Court will explain, given its interpretation of the "ratio factor" set out by the Utah Supreme Court in the Crookston decisions, the Court believes that a

25-to-1 ratio between the punitive damages and the compensatory damages is appropriate here, authorizing a punitive damages award, as remitted, of $25 million.

17. Because the ratio is greater than the presumptively appropriate 3-to-1 ratio, the Court sets out in some detail here why an award of this amount is justifiable under the seven Crookston factors, as the Utah Supreme Court has required in this context. See Crookston I, 817 P.2d at 811-13; Crookston II, 860 P.2d at 940. Further, the Court explains why State Farm's objection that the amount of the jury's punitive damage award is "grossly excessive," in violation of federal substantive due process in light of BMW v. Gore, is not well taken.

I. Jury Instructions

18. In considering the arguments concerning the amount of the punitive damages, it is helpful to review the instructions that were given to the jury on this subject. Consistent with the law, the jury was instructed in accordance with the Crookston factors as follows. The basic charge with respect to punitive damages was instruction No. 59, which reads:

> In addition to the compensatory damages, the Campbells also seek an award of punitive damages against State Farm. Punitive damages may be awarded only if compensatory damages are awarded.
>
> Before punitive damages may be awarded against State Farm, you must find by clear and convincing evidence that the insurance company's conduct toward the Campbells was willful and malicious, or such conduct was done with a knowing and reckless indifference toward, and disregard of, the Campbells' rights and well being.
>
> If you so find, you may award, if you deem it proper in do so, such sum as in your judgment would be reasonable and proper as a punishment for such wrongs, and as a wholesome warning to others not to offend in like manner. If such punitive damages are given, you should award them with caution and you

should keep in mind they are only for the purpose just mentioned and not the measure of compensatory damages.

In determining the amount of punitive damages, you should consider each of the following factors:

1. the relative wealth of the defendant;
2. the nature of the defendant's misconduct;
3. the facts and circumstances surrounding the defendant's misconduct;
4. the effect of defendant's misconduct on the lives of the Campbells and others;
5. the probability of future recurrence of the misconduct;
6. the relationship between the parties; and
7. the amount of compensatory damages awarded.

Punitive damages should be more than an inconvenience to the defendant and their amount should be sufficient to discourage the defendant and others similarly situated from doing or repeating such misconduct in the future.

Instruction No. 60 added:

> You are instructed that punitive damages constitute an extraordinary remedy outside the field of usual redress remedies which should be applied with caution lest, engendered by passion or prejudice because of a wrongdoing, the award becomes unrealistic or unreasonable. Plaintiffs are not automatically entitled to punitive damages and the law does not require you to award punitive damages to plaintiffs.
>
> The law provides no fixed standard as to the amount of punitive damages, but leaves the amount to the jury's sound discretion, exercised without passion or prejudice, however, the law requires that any award for such damages must bear a reasonable relationship to the actual or potential harm resulting from the defendant's conduct.

Instruction No. 61 reads:

> A defendant's conduct must be malicious or in reckless disregard for the rights of others, although actual intent to cause injury is not necessary. That is, the defendant must either know or should know "that such conduct would, in a high degree of probability, result in substantial harm to another," and the

> conduct must be "highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of harm is apparent."

19. The principles set forth in these instructions should be kept in mind in deciding whether or not the damage awards are excessive. It is worth noting that State Farm has raised no claim of instructional error in its post-trial motions. At no time before the jury's verdict did State Farm take the position that the jury should not be instructed to consider the seven Crookston factors in deciding the amount of punitive damages.

20. State Farm's post-trial positions are not entirely consistent with its own proposed jury instructions. For example, with respect to its post-trial motions, State Farm argues that the proper amount of punitive damages in this case cannot be evaluated, even in part, based on a corporation's wealth; indeed, State Farm argues that it is illogical to even refer to a corporation as possessing "wealth." State Farm Opening Memorandum at 105-07. State Farm's own proposed jury instruction No. 40 lists seven factors for the jury to consider in determining the amount of punitive damages. The first factor listed is: "The relative wealth of State Farm." In instruction No. 59, the jury was properly instructed, without objection, that it should "consider the relative wealth of the defendant." Accordingly, in spite of State Farm's current position, it is plain that its wealth (as well as the other six Crookston factors), may be considered in evaluating whether the jury's award is excessive.

21. A persistent theme running through State Farm's briefing is that whether or not the punitive damages awarded are excessive must be determined solely by reference to the

evidence concerning what State Farm did to the Campbells, and what punishment is appropriate for those actions considered in isolation — ignoring the Campbells' entire institutional case and all the evidence of similar misconduct by State Farm toward other Utah consumers during the past two decades.

22. However, beyond the objective of punishment, the jury instructions also properly allowed the jury to consider appropriate deterrence. Without objection from State Farm, the jury was directed in instruction No. 59 to set punitive damages based on "the nature of the defendant's misconduct" and "the probability of future recurrence of the misconduct." The Campbells' institutional case set forth ample evidence that the nature of State Farm's misconduct was pervasive: that it involved not an isolated instance of wrongdoing toward the Campbells or the occasional consumer, but instead a company-wide claim-handling policy of providing incentives to adjusters to systematically deny Utah consumers benefits owed to them under insurance policies (incentives that were never disclosed to consumers). There was ample evidence that this was done as part of a deliberate and wrongful effort to enhance corporate profits, a scheme that was orchestrated by top officials; that this policy caused the mishandling of the Campbell file; and that it continues to cause many other consumers to be wrongfully denied insurance benefits on a widespread basis.

23. Further, instruction No. 59 directed the jury to focus on awarding a sum that would serve "as a wholesome warning to others not to offend in like manner," and "discourage the defendant and others similarly situated from doing or repeating such misconduct in the future."

Given these various aspects of the jury instructions, State Farm's main argument against the amount of punitive damages — that it cannot be supported based on a narrow analysis of what was done to the Campbells alone, ignoring the Campbells' entire institutional case — is fundamentally misguided.

24. The Court now turns to State Farm's remaining arguments with respect to the Crookston and BMW v. Gore factors and to an explanation of why the Court has ordered a remittitur that reduces the punitive damages payable by State Farm to $25 million.

2. Crookston Factors

25. The Court addresses the seven Crookston factors as follows.

a. Relative Wealth of State Farm

26. State Farm's wealth is enormous, as no one would dispute. The evidence indicates that State Farm's surplus increased from $2.65 billion in 1977 to $25 billion in 1995. Its assets increased from $ 6.3 billion in 1977 to $54.75 billion in 1995, at an average increase of $4.3 million per working day in surplus, and $9.3 million per working day in assets. These numbers are important in assessing what amount of punitive damages is reasonably necessary to get the attention of State Farm officials and spur action to eliminate the wrongful conduct involved. "[P]unitive damages should be more than an inconvenience" to a wrongdoer, Cruz v. Montoya, 660 P.2d 723, 727 (Utah 1983), and it appears that "a typical ratio for a punitive damages award to a defendant's net worth may be around one percent." Cash v. Beltmann

North Am. Co., 900 F.2d 109, 111 n.3 (7th Cir. 1990). A punitive damages award equal to one percent of State Farm's wealth would be $547.5 million. The remitted amount of $25 million in punitive damages represents less than 1/20th of one percent of State Farm's wealth (.0457 per cent).

27. As a benchmark, it is worth noting that the remitted amount of punitive damages in this case, expressed as a percentage of wealth, is less than one-tenth the punitive damages award upheld by the Utah Supreme Court against the insurance company defendant in Crookston (there, approximately one-half of one percent of wealth).

28. Considerable evidence at trial from State Farm's own witnesses affirmatively established that punitive damages in the range of $145 million, about one-quarter of one percent of its wealth, appear necessary to capture the attention of top corporate officials and ensure that they monitor and change corporate policies as may be appropriate in reaction to punitive damage awards. Regional vice president, Buck Mostalski, State Farm's top official over Utah and an employee designated under Rule 30(b)(6) as knowledgeable about punitive damages against the company, testified that State Farm has no system in place to track or record punitive damage awards, or even to report them to top officials, and that he did not himself plan to report to headquarters any punitive damages award in this case. 21 Tr. 157, 171-72. Other testimony established that, because of State Farm's lack of any monitoring of punitive damage verdicts, even a $100 million award in Texas several years ago was never learned of, much less acted on, by headquarters. 11 Tr. 107-10. Given that State Farm is so wealthy that this earlier $100

million verdict (less than 0.18 percent of its wealth) was too small for top management even to notice, the jury's $145 million award (approximately 0.26 percent of its wealth) cannot be viewed as excessive under the wealth factor. (By contrast, there was no evidence of this sort presented in Crookston to support the award there, which was double the award of the jury here, expressed as a percentage of wealth).

b. Nature of State Farm's Misconduct

29. The second Crookston factor, which mirrors the BMW v. Gore "reprehensibility" factor, likewise strongly supports the punitive damages awarded by the jury. Whether a defendant's misconduct is of a reprehensible nature is "[p]erhaps the most important indicium of the reasonableness of a punitive damages award." Gore, 116 S. Ct. at 1599. The U.S. Supreme Court has singled out for special condemnation schemes of "trickery and deceit," especially when they target people who are "financially vulnerable" and involve "repeated misconduct." Id. Further, the Court has identified as particularly reprehensible a defendant's use of "deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive." Id. at 1601.

30. There is ample evidence in the record from which the jury could reasonably conclude that all of these elements of reprehensibility are present in the corporate policies that were responsible for injuring the Campbells, that have injured many other Utah consumers during the past two decades, and that continue today. The evidence has been summarized in detail by

the Campbells in their briefs, see Campbell Opening Memorandum at 12-143; Campbell Surreply Memorandum at 13-41, and at oral argument on the post-trial motions. The Court here briefly summarizes three key aspects of the evidence that are important to understanding its analysis of the reprehensibility of State Farm's misconduct: (i) State Farm's official policy of giving its adjusters undisclosed incentives to deny consumers benefits owed them, in order to enhance corporate profits by wrongfully turning its claim-handling process into a profit center; (ii) State Farm's use of various wrongful means to conceal this profit scheme and evade punishment for it; and (iii) the impact of these profit and evasion schemes on the Campbells specifically.

31. *i. State Farm's policy of using its auto insurance claim-handling process as a profit center by offering its claims adjusters undisclosed incentives to wrongfully deny benefits owed consumers.* The record contains a large body of evidence, in the form of State Farm's own internal corporate documents, the testimony of its current and former employees, and credible expert testimony, that over a period of approximately two decades, State Farm has pursued an official policy of using its auto insurance claim-handling process as a profit center, by systematically providing its claim adjusters with unlawful incentives to wrongfully deny benefits owed consumers.

32. At the outset, to appreciate the force of this evidence it is important to understand the well-accepted standards for what sources of profit are permissible in the insurance industry, what sources are impermissible, and how this relates to the appropriate compensation systems

for insurance adjusters. The Campbells provided credible, uncontroverted expert testimony on this point. See Campbell Opening Memorandum at 45-53. In brief, insurance is a public trust sort of business, in which the insurance company takes in premiums to cover a pool of risk, and the customer, as well as the public generally, has to be able to trust that the insurance company, once a risk turns into a harm at a later date, will timely pay fair value on the claim after due investigation. The claims adjuster should be allowed to handle each claim on its merits, without having incentives or pressures to underpay claims in an attempt to meet arbitrary average payment-per-claim goals designed to enhance corporate profits. In the insurance business, it is universally accepted and was uncontroverted at trial, that insurers must not seek to enhance profits by intentionally underpaying claims, but that companies must focus on building profits by such means as enhancing their ability accurately to assess risk and thus price their product appropriately, increasing their customer base by effective marketing, maximizing their investment income on premium monies prior to payout, and achieving efficiencies in their operations generally.

33. The evidence made clear that in the insurance business it is regarded as essential that an insurance company may not properly seek to increase its profits by pressuring its claim adjusters to pay out less than is owing on claims, even if this could be easily done by taking advantage of people who have no idea what claims are worth, or who are so in need of funds that they would be forced to accept far less than is fairly owing if the only alternative were substantial delay and/or a need to institute litigation. The reason is that the core function of

the insurance business is to timely pay fair value in the event of a loss, so that fulfilling this function requires an insurance company to blind itself to the economic advantage it could obtain if it were to use its superior knowledge and financial leverage to pay out less than what claims are actually worth. Thus, it is universally accepted within the industry that the compensation of claim adjusters cannot be set based on whether or not their claim payouts save the company money; if that were allowed, adjusters would be systematically induced to pay out less than is fairly due. The public trust aspect of the insurance industry dictates that the incentives of claim adjusters must be set in line with the underlying insurance function: to timely pay out fair value on claims, no more and no less.

34. Indeed, the slogan that State Farm purports to have its adjusters follow is that "we pay what we owe, not a penny more, not a penny less." Unfortunately, reality does not comport with this slogan. The record contains extensive evidence that for approximately two decades, State Farm has disregarded well-accepted industry rules by turning its claims-adjusting process into a profit center, to the point of giving its claim adjusters specific numerical targets with regard to average payouts per claim. Meeting these targets leads to better pay and promotional prospects; missing them leads to criticism, retarded prospects at the company and, ultimately, a threat to one's continued employment.

35. A variety of internal documents generated by State Farm during the 1970s and 1980s demonstrate the decision of top management to pursue the explicit objective of using the claims-adjustment process as a profit center. One of the more important pieces of evidence of

an unlawful policy is the document dated May 1, 1979, laying out State Farm's "Performance, Planning and Review," or "PP&R," program. See PX-57(1), Tab 10. (It should be noted that this important document was not produced by State Farm, which aims to have destroyed it, but was obtained by the Campbells by subpoena from a former State Farm claims manager. The head of State Farm's document retention program, Dan Cochran, who testified at trial, would not commit that this document will not again be destroyed by State Farm at the conclusion of this case.) As the Campbells established with the aid of credible expert testimony, this document, particularly when viewed in connection with related documents and the testimony of State Farm employees, provides valuable insights into State Farm's inherently wrongful method of running an insurance claims operation.

36. The PP&R program explicitly covers "all levels of employees" at State Farm, including claims adjusters, and seeks to "reward merit salary-wise"; analysis of each employee's work under the PP&R program is designed to "[r]ealistically support merit salary recommendations." "Merit," in the context of claims adjusting, is explicitly defined by the PP&R program as including the ability to meet preset targets for payouts each year — i.e., targets for payouts that are tied not to the severity and fair value of the claims that are being handled, but rather to State Farm's goals for making profits, by arbitrarily holding down payouts, for that year. (It bears emphasis that such arbitrary payment goals are set for claims that have not yet arisen, concerning accidents that have not yet happened.) Thus, the PP&R program requires supervisors to set goals for claim adjusters, at the start of each year, such as:

"Hold BI [bodily injury] paid cost to (number) or less for (year)"; "List prior damage [i.e., report prior damage to cars involved in accidents] on x% of all estimates written by (date)"; and "Negotiate appearance allowances [i.e., a form of payout that, by definition, is made at less than the insured is entitled to receive under the policy] on x% of all estimates written by (date)."

37. The evidence further demonstrates that, in carrying out this PP&R program, which directly pressures adjusters to keep down payouts in order to meet these sorts of preset targets having nothing to do with the merits or actual value of the specific claims that an adjuster would encounter in the coming year, top State Farm management has informed adjusters that they are the "big spenders," who pay out over 70 percent of the premium dollars paid by consumers, and that it is their responsibility to "shore up the bottom line" — i.e., to keep down payouts — in order to ensure that State Farm has the "most profitable claim service in the industry." 11 Tr. 5, 6, 44, 45; PX-57.

38. The Campbells presented specific testimony, by Fye and Prater, demonstrating that this approach of using the PP&R program to mix the claim service function with the quest for greater corporate profits is inherently wrong. These experts testified that the PP&R incentive system cannot be justified "in any way," 17 Tr. 58, given the duty to treat insureds "honestly and fairly." 17 Tr. 43. They described such an incentive system as simply "taboo in the insurance industry," 11 Tr. 6; as "grossly unfair" to consumers, "absolutely wrong," "just absolutely what you would never want to see in a claims organization," 4 Tr. 58-59; as

inherently fraudulent if not fully disclosed to the consumer (given that, if consumers were informed in advance of the incentive system no one would buy State Farm's policies), 11 Tr. 9; and as "creat[ing] a corporate culture that is predatory" and "take[s] advantage of the gullible and defenseless people." 4 Tr. 64; 11 Tr. 90.

39. State Farm's defense was that the PP&R program, despite its plain wording, at no point has enforced any such incentive system; that the PP&R program's sole function with respect to adjusters has been simply to encourage the setting of non-binding "awareness goals" that had no effect on pay or performance; and that, in any event, State Farm has discontinued the practice of setting average pay per claim goals, in directives issued in 1992 and 1994. However, the Campbells presented considerable evidence, both in the form of documents and through the testimony of current and former State Farm employees, that the PP&R program, including payout goals, has functioned, and continues to function, as an unlawful scheme to provide undisclosed incentives to adjusters to deny benefits owed consumers by paying out less than fair value in order to meet preset, arbitrary payout targets designed to enhance corporate profits.

40. The evidence also clearly established that the PP&R program, including the arbitrary claims payout goals, has applied equally to the handling of both third-party and first-party claims.

41. The effect of the PP&R program's arbitrary claim payout targets on operations here in Utah, and particularly the constant pressure to reduce the money paid out on a year-to-year basis, was established by testimony that started with low-level claims adjusters, such as Felix Jensen and Ray Summers, and went up through the ranks of management. The collective picture of operations under the PP&R program presented by this evidence was one of unrelenting pressure to keep down payouts to meet arbitrary claim payment goals. For example, Felix Jensen, a current Utah State Farm employee of more than 30 years, testified as to the "many, many, many times" that high-level claims managers would pressure adjusters to revise downward their evaluation of what should be paid out on claims. Jensen went to top managers and pointed out the "intolerable situation" that was being created for adjusters, who were simply unable to run a properly functioning system in which fair value would be paid for claims. Jensen was bluntly instructed to "get out of the kitchen" if he could not stand the heat.

42. Samantha Bird, a longtime Utah State Farm claims supervisor, also experienced pressure to reduce payouts to well below fair value as a "recurrent, running theme." She, too, went to high-level management in an attempt to do something about it. Instead of being taken seriously, her complaints led to advice that she should be "more of a team player." Bird was criticized by those higher in the management structure as being the only supervisor who argued against downward claim payout pressures. She endured for years constant criticism of her approach to claims handling. At times even she was forced to commit dishonest acts and to

knowingly underpay claims. Bird ultimately tired of being forced to commit dishonest acts and resigned from the company.

43. Although Utah managers higher than Bird such as Noxon and Brown (both of whom are still employed at State Farm) did their best to deny that their operations were in any way improperly influenced by the PP&R program — which they characterized as simply suggesting the use of non-binding "awareness goals" concerning claim payouts — compelling evidence was introduced contradicting this testimony. A number of the documents evaluating and discussing the performance of Noxon and Brown and their subordinates contained explicit, preset average payout goals. In particular, Brown's PP&R evaluations included repeated references to the need to reduce average payments on claims (in spite of inflationary pressures driving up medical bills, auto repairs, wages, etc.), with Brown boasting about his success in doing so, in the course of seeking (successfully) a transfer to a more desirable location.

44. Further, the Campbells demonstrated, through the testimony of State Farm employees who had worked outside of Utah, and through expert testimony, that this pattern of claims adjustment under the PP&R program was not a local anomaly, but was a consistent, nationwide feature of State Farm's business operations, orchestrated from the highest levels of corporate management. Moreover, the record contains substantial evidence that, contrary to State Farm's claims that it "obsoleted" average payment goals through memos circulated in 1992 and 1994, the practice was still being carried out at the time of trial in 1996. The only difference is that the arbitrary payout goals, designed to enhance bottom-line corporate profits,

are no longer set out in writing; to make it more difficult to prove how the program operates to injure consumers, this key element of the program is now carried out verbally.

45. Finally, the record demonstrates in considerable detail the use by State Farm adjusters of a wide variety of highly unfair and dishonest methods to drive down average payouts on claims, in circumstances that make it clear that the affected consumers are being routinely denied the fair benefits of the relevant insurance policies. Just the testimony of Ray Summers alone (the adjuster who handled the Campbell case and who was a State Farm employee in Utah for almost twenty years) outlined more than a dozen such methods, including the falsifying or withholding of evidence in claim files, one of the fraudulent tactics which was used, at Bill Brown's direction, in handling the Campbell case. 12 Tr. 188. Summers was praised for his effective use of unfair and dishonest claims practices and was encouraged by management to teach them to others. His supervisor told current long-term State Farm employee, Marilyn Poulson, who questioned the honesty of the practice, that Summers' falsification of documents was "good business, it helped to settle claims." 13 Tr. 162-63.

46. A number of other witnesses and documents described additional methods used by State Farm in dishonest and unfair ways to reduce claim payments. Although State Farm denied that it has conducted claim-payout related contests, documentary evidence was presented of such contests being held, at the instance of management, which encouraged the use of unfair settlement tactics.

47. ***ii. State Farm's use of unlawful and unethical means to conceal its profit scheme and evade punishment for it.*** The record also contains ample evidence that, throughout at least the past two decades, State Farm has resorted to a variety of wrongful means to attempt to evade detection of, and liability for, its unlawful profit scheme. Using these tactics, State Farm has managed to construct a nearly impenetrable wall of defense against punishment for its wrongdoing, one so effective that it is able to pressure its adjusters to deny consumers insurance benefits with impunity, knowing: (1) that few of its victims will even realize that they have been wronged; (2) that fewer still will ever be able to sue; (3) that only a small fraction of those who do sue will be able to weather the years of litigation needed to reach trial; and (4) that any victims who do actually reach trial will have great difficulty establishing the basis for punitive damages when met with claims that only an "honest mistake" was made, supported by a body of evidence that has been systematically sanitized, padded, purged, concealed, destroyed or rehearsed.

48. The record indicates that these evasion tactics are so successful that State Farms trains its employees to ignore the threat of punitive damages in making their claim-handling decisions. State Farm has relied on five principal evasion tactics, each of which is reprehensible.

49. ***a. Systematic targeting of vulnerable and defenseless consumers.*** The record clearly supports the conclusion that State Farm's undisclosed policy of using its claim-handling process as a profit center to systematically deny benefits owed to consumers is deliberately

crafted to prey on "the weakest of the herd" — the elderly, the poor, and other consumers who are least knowledgeable about their rights and thus most vulnerable to trickery or deceit, or who have little money and hence have no real alternative but to accept an inadequate offer to settle a claim at much less than fair value. The testimony from Ray Summers, Bruce Davis and Ina DeLong on how they were trained to target such consumers, and the expert testimony from Gary Fye covering the various tactics predicated on this philosophy and the internal company documents demonstrating this philosophy in action, was especially significant.

50. ***b. Systematic destruction of documents, requested in litigation, that reveal the profit scheme.*** The record contains considerable evidence concerning State Farm's aggressive efforts to "manage" documents that might damage it in bad-faith litigation, including evidence of extensive efforts to erase large portions of the corporate memory. As the Campbells urged at trial, and have reiterated at length in their post-trial briefing, the evidence of State Farm's systematic and long-running efforts to destroy internal company documents revealing its profit scheme supports an inference that State Farm was seeking to minimize the possibility that it would be punished for its underlying misconduct.

51. State Farm's own expert witness on records management, Robert Williams, set out an appropriate benchmark for assessing the propriety of State Farm's document destruction efforts. Williams testified to three basic principles of proper records management: (1) given the large volume of information involved in transacting business, a corporation needs to have a "corporate memory," by retaining information documenting the nature of its past activities; (2)

it would be "abhorrent" and "absolutely" not proper for a corporation to seek out documents on corporate practices that it views as unfavorable, replace them with new versions, and destroy the original versions, so that someone who later wanted to find out what happened would get a distorted picture; and (3) it would be improper for a corporation to retrieve documents from discovery in a completed case and destroy them while they are subject to document requests in other cases, while representing in the other cases that such documents do not exist.

52. The record reveals that State Farm violated all three of these principles on multiple occasions, in an obvious effort to evade liability for bad-faith claim handling, as summarized by two experts called by the Campbells familiar with State Farm's document management practices, Gary Fye and Steve Prater. Many documents that were critical to the Campbells' proof in this case were obtained not through discovery directed to State Farm, but through the fortuity that State Farm employees happened to retain them after leaving the company, or that Fye uncovered and retained copies during the 1970s and 1980s in the process of investigating the company's claim-handling practices, often as part of litigation against the company.

53. One example of State Farm's document destruction efforts is noteworthy. It is undisputed that, in accordance with sound records management practices, on November 16, 1988, State Farm had at its corporate headquarters a special historical department that contained a copy of all past manuals on claim-handling practices and the dates on which each section of each manual was changed. Thus, State Farm had a "corporate memory" of its past

manuals, including the manuals that applied to the claim against Curtis Campbell in 1981 through 1983, from which it could easily satisfy discovery requests with respect to such manuals. It is conceded by State Farm's own experts that given then-available and currently available compact storage mechanisms, all of this information could be stored in space the size of a desk, on microfilm, microfiche, or computer media.

54. It is undisputed that, when the Campbells filed suit in 1989 and immediately filed document production requests for all claim-handling manuals in effect at the time the claims against Curtis Campbell were adjusted, none of this information was provided them. Instead, State Farm provided the Campbells only with copies of the subsequent, then-current manuals that were in its local Utah offices, asserting that its earlier manuals were no longer available.

55. The record also reflects that, shortly thereafter — while this case and others alleging bad-faith claim handling remained pending and subject to outstanding discovery requests — State Farm launched elaborate efforts to destroy its existing corporate memory on its past claim-handling practices, with the explicit purpose of keeping them from discovery in bad-faith cases. Through documents retained by Samantha Bird when she left State Farm, as well as Ms. Bird's own testimony, it was established that on April 5, 1990, while this case was pending, Janet Cammack, an in-house attorney sent by top State Farm management, conducted a meeting here in Utah during which she instructed Utah claims management to search their offices and destroy a wide range of material of the sort that had proved damaging in bad-faith litigation in the past — in particular, old claim-handling manuals, memos, claim school notes,

procedure guides and other similar documents. These orders were followed even though at least one meeting participant, Paul Short, was personally aware that these kinds of materials had been requested by the Campbells in this very case.

56. In the meeting, Cammack stated that not even corporate headquarters would retain copies of these materials. Consistent with that evidence, State Farm concedes that it has destroyed every single copy of the old claim-handling manuals that it had on file in its historical unit in 1988, even though these documents could have been maintained at minimal expense. In a parallel effort, in 1995 State Farm sent letters to its more than 2,000 current or former outside law firms directing them to destroy or return immediately every copy of a wide range of potentially damaging documents. Further, Fye provided testimony regarding a number of instances in which a plaintiff obtained access to State Farm documents subject to a protective order or confidentiality agreement; the cases were settled so that the documents did not become public at trial; the documents were returned pursuant to the settlement agreement; and then, when other plaintiffs requested these documents, State Farm responded that it did not have them.

57. As a final, related tactic to minimize the amount of information concerning its claim-handling practices available to those scrutinizing the company, in recent years State Farm has gone to extraordinary lengths to stop damaging documents from being created in the first place. As Fye and Prater testified, State Farm takes a highly aberrant approach — inconsistent with the sound principles of corporate management and records control set out in the testimony

of State Farm's own expert — of keeping no records at all on excess verdicts in third-party cases, or on bad-faith claims made against State Farm or verdicts (including punitive damages verdicts) assessed against State Farm. (State Farm claims that it has no record of its punitive damage payments, even though such payments must be reported to the IRS and in some states may not be used to justify rate increases.) State Farm contends that it has in place no mechanism for even alerting top executives to such developments on a current basis. Indeed, regional vice president Buck Moskalski testified that he would not report a punitive damage verdict in this case to higher management, as such reporting was not set out as part of State Farm's management practices. This evidence strongly supports the inference that efforts by top executives to cultivate willful blindness to the effects of State Farm's corporate policies are consciously designed: (1) to deprive victims of State Farm's misconduct of information useful to proving a pattern or practice of wrongdoing, and (2) to give top management plausible deniability, making it easier for them to depict instances of wrongdoing as simply reflecting an isolated, "honest mistake."

58. *c. Systematic manipulation of individual claim files to conceal claim mishandling.* The record also contains ample evidence that State Farm has long directed its claim adjusters to systematically "sanitize" or otherwise manipulate individual claim files to provide a false, innocent picture of how the claim was handled, in an effort to minimize exposure to later lawsuits alleging bad-faith claim handling. Fye and Prater provided numerous examples of this practice and pointed to official company documents (most of which State

Farm once believed it had successfully destroyed) indicating that this practice reflects a long-standing philosophy among State Farm management. Examples of this practice in action were also provided by Bruce Davis and Ina DeLong, who gave detailed testimony on how they were required systematically to improperly rewrite documents detailing and manipulating claim files and maintain important information on temporary "buck slips" or "post-it" notes, to be removed later, and of how their superiors routinely engaged in successive "purges" of any negative information that might remain in a file, prior to it being handed over to opposing attorneys in discovery.

59. A State Farm document entitled the "Excess Liability Handbook," written before the Campbell accident, contains detailed instructions on the padding and sanitizing of claim files in cases with exposure above the policy limits. Portions of this Handbook provide evidence supporting the conclusion that State Farm viewed the practice of taking a hard line and gambling in "excess cases" (when applied to many cases) as an effective method for reducing claim payments, thus enhancing corporate profits. This Handbook also contains evidence that State Farm recognized the need to conceal that it was making conscious decisions to subject its insureds to the risk of excess verdicts. Accordingly, the Handbook has instructions on padding the file with "self-serving" documents, as well as instructions to leave certain critical items out of files, such as evaluations of the insured's exposure. Such instructions clearly required manipulation of files to conceal State Farm's misconduct in excess cases and to make it very difficult for an insured who is victimized by an excess verdict to ever hold State Farm

accountable. Expert witness Fye testified that the Campbell case was a classic example of State Farm's application of the improper practices taught in the Excess Liability Handbook.

60. *d. Systematic manipulation of testimony by employees.* The record contains substantial evidence that State Farm has long had a corporate policy, in defending against cases alleging bad-faith claim handling, of aggressively "coaching" its employees to ensure that their testimony will be favorable to the company and that opposing attorneys will be hindered in their ability to obtain relevant, non-privileged information from such witnesses. The Campbells presented direct evidence of such a practice in the form of transcripts of videotapes of a company-wide claims management conference at which State Farm's claim-handling supervisors were told that they should anticipate being potential witnesses for the company in bad-faith litigation. The supervisors were taught that in courtrooms, "truth is illusory" how, through extensive coaching, a memory can be "created" for a company witness; and how, by repeating questions and prepared answers "numerous times," State Farm attorneys and witnesses can work together to "totally frustrate" the efforts of opposing attorneys.

61. *e. Systematic efforts to intimidate opposing claimants, witnesses and attorneys.* Finally, the evidence in this case supports the conclusion that State Farm has a regular practice of working to wear down and outlast plaintiffs and opposing attorneys in lawsuits seeking to punish it for bad-faith claim handling, by using a variety of tactics to intimidate claimants, witnesses and attorneys who oppose it.

62. Regarding the intimidation of claimants, there is evidence in the record of State Farm's training of its representatives to intimidate claimants who charge it with bad-faith claim handling. State Farm's publication on "Extra Contractual Lawsuits," which was in use by 1979, instructs its outside attorneys to "ask personal questions" as part of an examination under oath of a claimant, for the apparent purpose of deterring the claimant from continuing with the process, out of a fear of embarrassment:

> Most of us consider our income, our debts, our domestic problems, how we spend our money, whether we are keeping another woman, and things of this nature to be very personal. We don't like other people asking us questions about these things, and, under normal circumstances, we don't go around asking other people these questions. However, . . . where a punitive damage count is in a lawsuit, these matters become extremely important to the successful defense of that claim.
>
> If the insured is paying the expenses of keeping some woman in an apartment, that may be extremely personal business, especially if he is married, but if he . . . charges that we are guilty of conduct for which we should be punished, it is also our business.

PX-121, "Extra Contractual Damage Claims: What They Are, and How to Handle Them," at 10-11. Although this document is nearly two decades old, Gary Fye testified in 1996, based on his current knowledge of State Farm's practices, that "this accurately represents the attitude toward [him] and others involved" with bad faith litigation against State Farm. 12 Tr. 69. State Farm's official training manual focuses on the use of such personal matters, in the settlement of all claims, from the beginning. It lists subjects such as "infidelity" that can be used against a claimant on a claim that is "under direct negotiation." Article 11 Claim Superintendents' Manual (April 1971), PX-57(2) Tab 9 Trial pages 382-384. Adjuster Ray

Summers testified that a common tactic of State Farm was that of "unjustly attacking the character, reputation and credibility of a claimant and making notations to that effect in the claim file to create prejudice in the event the claim ever came before a jury." 12 Tr. 217. In fact, Bob Noxon sought to use this tactic in the Campbell case, instructing Summers to write in the file that Todd Ospital (who was killed in the accident) was speeding because he was on his way to see a pregnant girlfriend. There was no pregnant girlfriend. Expert testimony established that using such tactics as part of the insurance adjustment process is completely improper. See 17 Tr. 153 (Prater).

63. State Farm uses similar tactics in an attempt to intimidate witnesses from opposing it in bad-faith litigation. Former long-term State Farm employee Ina DeLong has given testimony critical of State Farm in a number of cases, and testified that she has "personally been the subject of some of this kind of conduct by State Farm." 14 Tr. 116 and 207-08. State Farm has conducted an "extensive" investigation of DeLong's personal life, including her sex life (to the point of paying a maid at a hotel to reveal whether or not DeLong was having overnight guests), compiling an 88-page dossier on her. 14 Tr. 207-08. State Farm has assigned an attorney to "shadow" her in bad faith cases where she appears and to essentially harass her with unnecessarily repetitive depositions. 14 Tr. 214-15. DeLong testified:

> [T]hey frequently run from three to five days, where we go over the same things, the same allegations, the same unpleasantness. They're usually videoed, frequently with in excess of two or three flood lamps, for seven and eight hours at a time.

14 Tr. 214-15.

64. Gary Fye has experienced similar harassment at the hands of State Farm for his work over more than a decade to preserve copies of key documents on State Farm's internal practices. 12 Tr. 69-70.

65. Finally, with respect to the intimidation of attorneys who might be in a position to bring contingent-fee litigation against State Farm on behalf of victims who have few resources, the record reveals that State Farm has a practice of resorting to what one of its consultants (as part of the official training process) approvingly referred to as "mad dog defense tactics." At a national conference, approximately 200 of State Farm's divisional claims superintendents were instructed that "we keep plaintiffs tied up in law and motion for months. Now that's the old mad dog defense tactic, but it works." 17 Tr. 205. Expert witness Steve Prater testified to State Farm's methods for exploiting its superior resources to wear out opposing attorneys with unending, vexatious and expensive litigation tactics. According to Prater, State Farm focuses on making the litigation process as time-consuming, expensive and prolonged as possible by, for example, making meritless objections; claiming false privileges; and destroying documents or claiming that they don't exist or would be too expensive to retrieve. 17 Tr. 163-64, 168-74.

66. The result of such tactics, Prater testified, was that many lawyers get worn down and capitulate, rather than continuing the litigation, so that it is extremely difficult to continue with the litigation long enough to develop a complete factual record and reach trial. Gary Fye also provided expert testimony on these "mad dog" litigation tactics, concluding that State Farm's

use of them is "extremely profitable," even in light of the cost involved for an individual case, because of their in terrorem value across a wide range of cases in intimidating claimants and attorneys into not filing lawsuits at all, or settling claims for small amounts of money rather than endure the financial drain of litigation in the face of such abusive tactics. 5 Tr. 114. (For example, by destroying or hiding the 1979 PP&R manual, State Farm has been able to keep any other court from considering this critical document. 12 Tr. 90-91 (Fye). Plaintiffs obtained it by subpoena from former State Farm employee John Crowe, who resides in Utah. It has been requested in other cases, but has never been produced. Id.) Indeed, Fye had never seen a case in which the plaintiffs' attorneys had managed to reach the advanced stage reached in this case. 12 Tr. 46.

67. ***iii. The impact of these profit and evasion schemes with respect to the Campbells specifically.*** The evidence established that prior to the 1981 accident involving Curtis Campbell, State Farm conceived and implemented the wrongful profit and evasion schemes described above. These schemes have permeated all aspects of its claim-handling practices, including its mistreatment of consumers on both third-party and first-party insurance claims. Fraud and deception are inherent parts of the success and profitability of these schemes. As these schemes were applied in the Campbells' case, State Farm was able to engage in a gamble in which the Campbells (unwittingly) had all the downside risk and State Farm had all the potential upside gain.

68. This case is a clear example of how State Farm applies its profit and evasion schemes. Nevertheless, State Farm has argued at length that the evidence about State Farm's unlawful profit scheme of giving undisclosed incentives to adjusters to underpay amounts owed to consumers on claims, and its related evasion scheme of using various unlawful and unethical tactics to escape any punishment for its profit scheme, is irrelevant to this case, and cannot be taken into account in setting punitive damages, because the Campbells assertedly were not injured as a result of these policies and practices. State Farm claims that, because (in hindsight) it seems foolish for Bill Brown and other managers in Utah not to have settled the litigation against Curtis Campbell, but instead to take it to trial, and because State Farm ultimately ended up paying out much more than the policy limits on the case, what happened to the Campbells cannot be viewed as part of any unlawful profit scheme being run by State Farm. The key contention for State Farm is that it did not, in fact, profit from what happened to the Campbells. In making these claims, State Farm ignores both the proper perspective on the PP&R program and specific evidence in the record.

69. The record fully supports the conclusion that the bad-faith claim handling that exposed the Campbells to an excess verdict in 1983, and resulted in severe damages to them, was a product of the unlawful profit scheme that had been put in place by top management at State Farm years earlier. The Campbells presented substantial evidence showing how State Farm's improper insistence on claims-handling employees' reducing their claim payouts during the coming year, regardless of the merits of each claim, manifested itself under the PP&R program

in the Utah claims operations during the period when the decisions were made not to offer to settle the Campbell case for the $50,000 policy limits — indeed, not to make any offer to settle at a lower amount. This evidence established that high-level manager Bill Brown was under heavy pressure from the PP&R scheme to control indemnity payouts during the time period in question. In particular, when Brown declined to pay the excess verdict against Curtis Campbell, or even post a bond, he had a special need to keep his year-end numbers down, since the State Farm incentive scheme meant that keeping those numbers down was important to helping Brown get a much-desired transfer to Colorado.

70. The Excess Liability Handbook (which Brown apparently kept in his office and used to train subordinates, as Samantha Bird's testimony indicated), contains evidence supporting the conclusion that State Farm viewed taking a hard line in "excess cases," both before and after trial, to be an effective method for reducing indemnity payments. There was ample evidence that the concepts taught in the Excess Liability Handbook, including the dishonest alteration and manipulation of claim files and the policy against posting any supersedeas bond for the full amount of an excess verdict, were dutifully carried out in this case.

71. Under the PP&R scheme, the actions taken by Brown and his subordinates with respect to the claims against Curtis Campbell appear to be textbook examples of the sort of behavior that is predictably rewarded by State Farm under the PP&R program. There was ample basis for the jury to find that everything that happened to the Campbells — when State Farm repeatedly refused in bad-faith to settle for the $50,000 policy limits and went to trial, and then

failed to pay the "excess" verdict, or at least post a bond, after trial — was a direct application of State Farm's overall profit scheme, operating through Brown and others.

72. State Farm's main response to the Campbells' explanation of how the Campbell bad-faith claim handling was, in fact, an application of State Farm's unlawful profit scheme, is to call this an "irrational thesis," stating that it does not explain "why State Farm would adopt a corporate policy of wasting money by trying no-brainer cases." State Farm Surreply Brief at 28-29. Again, however, the essence of State Farm's claims-handling profit scheme was its disciplined insistence on having claims adjusters and employees work on a systematized basis to meet arbitrary, preset targets, one year at a time — and then, if that strategy yields an occasional setback threatening to take money out of the corporate coffers (through a lawsuit alleging bad faith), relying on a panoply of techniques for bullying the complaining victim into backing down rather than doing to State Farm what apparently only the Campbells, in the history of bad-faith litigation against State Farm, have managed to do: get to a jury on a punitive damages claim, armed with a reasonably complete factual record concerning the nature of State Farm's unlawful policies and practices.

73. The fact that this PP&R scheme will, in isolated cases, sometimes cost State Farm money, compared with what would have happened in that isolated case if fair value had been promptly paid, is obvious but irrelevant for present purposes. The PP&R policy is crafted to increase corporate profits across a broad range of claims on a yearly basis. Pursuing a PP&R policy such as State Farm's can be perfectly rational, from a profit-maximizing perspective,

even at the price of an occasional setback. State Farm's complaints about the "bizarreness" of the Campbells' argument, see State Farm Reply Br. at 28 n.13, if accepted, would logically entail, for example, the conclusion that any investment strategy that doesn't invariably make one's stock or bond portfolio go up in value on every investment is "irrational" or "bizarre." That perspective makes no sense. What happened to the Campbells was just one more casualty of State Farm's overall approach toward claim handling, so that State Farm's argument on this point is without merit.

74. State Farm also suggests, much more briefly, that the evidence concerning State Farm's evasion tactics also has little or nothing to do with the Campbells or with the proper amount of punitive damages in this case. Apart from the fact that consideration of this evidence, which goes to State Farm's perception of the likelihood that it would ever be punished for its wrongdoing, is essential in considering the proper amount of punishment to be assessed in the rare case that emerges and goes to trial (as set forth in the Campbells' memoranda and below), the record also shows that a variety of evasion tactics were used by State Farm, through Summers, Brown, Noxon and others, in an effort to conceal its wrongdoing toward the Campbells and evade any punishment in connection with that wrongdoing.

75. Given all this, the Campbells' instructional case, outlining the broader corporate policies that produced both the injuries that the Campbells suffered and the efforts of State Farm employees to minimize the possibility of punishment, was properly considered in setting the appropriate amount of punitive damages.

76. *iv. Other findings regarding the nature of State Farm's misconduct.* The Court listened to the evidence and carefully evaluated the credibility of the witnesses called by both sides, and believes that the jury reasonably concluded from the evidence that the above-summarized policies and practices do in fact exist at State Farm, and were in fact responsible for the injuries suffered by the Campbells. Further, the Court believes from the evidence that these policies have been followed at State Farm for the past two decades and that the means used to implement the policies are highly reprehensible. Those means certainly qualify under many of the factors referred to in BMW v. Gore as being egregious — they are callous, clandestine, fraudulent, and dishonest.

77. Beyond the fact that State Farm's misconduct bears the characteristics of especially reprehensible behavior set out in Gore, it is the sort of misconduct that the Utah Supreme Court condemned in Crookston. There, the Court noted that "[f]rom the evidence presented at trial, the court could reasonably conclude that Fire Insurance conducted what amounted to a conscious policy of fraudulently denying its customers the benefits of their contracts." Crookston II, 860 P.2d at 941. In this case, unlike in Crookston, the jury was presented with direct evidence, in the form of internal company documents, admissions from a number of current or former employees, and expert witnesses, from which it could reasonably find that precisely such a scheme has been pursued, and over a lengthy period of time.

78. Further, Crookston continued:

> It could be inferred that Fire Insurance's motive for engaging in such conduct was to substantially increase its profits. Depriving a company of the benefits of such a course of conduct and deterring it from acting in this fashion in the future may warrant an award of punitive damages that far exceeds the ratios that we have previously found reasonable. If a company could predict that its systematic fraudulent conduct would evade detection in many instances and on those few occasions where it was discovered, would never result in punitive damages greater than the ratios we have historically upheld, it could carefully calculate the cost/benefit ratio of its wrongful conduct and avoid the deterrent potential of punitive damages. Frustrating this sort of calculus was one of the reasons we gave in Crookston I against adopting rigid dollar amounts or ratio ceilings on punitive damage awards.

Id. at 941 (citing Crookston I, 817 P.2d at 809). This analysis fully applies here.

79. Earlier in the opinion, the Court approved of certain analysis of the trial judge in Crookston that also seems highly pertinent here:

> The [trial] court stated that the conduct at issue was done with the sole apparent purpose of enabling the insurance company to avoid paying out sums legitimately owed to the Crookstons. This conduct, the court said, demonstrated the company's "calculated and calloused attitude" toward settling valid claims. . . . Given the large volume of claims handled annually, Fire Insurance's vast financial resources, and management's active endorsement of the fraudulent conduct, the court deduced that this sort of practice would be widely engaged in unless devastatingly punished. "One may never know how many of the thousands of claims handled in Utah and elsewhere by Fire Insurance have been subjected to the same kind of fraudulent manipulation as occurred in this case . . . ."

Id. (quoting trial judge decision).

80. The evidence on the scale of the fraud, and the need for devastating punishment, is far more extensive in this case than in Crookston. State Farm has sold as its product "peace of mind," using an advertising slogan which promises that consumers can count on it to act "like a good neighbor." But as the trial proceeded, it became a matter of plain evidence that State Farm's corporate policies involve betraying the trust that it invites its policyholders to place in it, the trust that it has a fiduciary duty to uphold. The jury could easily find from the evidence that State Farm's claim-handling practices are predicated on exploiting the trust placed in it by its policyholders, and the Court so finds in making its own analysis of the proper amount of punitive damages in this case. In sum, in light of all the above considerations and the other points made by the Campbells in their memoranda and oral argument, the reprehensibility of State Farm's policies and practices, both generally and as they were applied to the Campbells, strongly supports a jury award of massive punitive damages.

c. Facts and Circumstances Surrounding State Farm's Misconduct

81. As to this factor, the Court simply refers to the facts that the Court has already commented on in determining the proper amount of compensatory damages for the Campbells, and the facts just discussed concerning the reprehensibility of State Farm's corporate policies designed to betray the trust placed in it by its policyholders and evade punishment for that wrongdoing. The Court believes that those facts speak for themselves with respect to the type of insensitive and callous behavior exhibited by State Farm toward consumers, clearly justifying a large punitive damages award.

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

82. The Court has already dealt in other orders with the effects of State Farm's misconduct on the Campbells. As to the lives of others, it seems to the Court, as the Campbells have detailed at length, that the very nature of State Farm's policies, and the tactics it uses to evade the imposition of punitive damages, make its misconduct extremely hard to detect and punish. The Court shares the view that the evidence demonstrates, as argued by the Campbells' counsel, that often the harm is minor to the individual but massive in the aggregate. The scheme, it seems to the Court, is pernicious. Not only does it injure large numbers of insureds, but it has the effect of corrupting employees (not that any employee wrongfully adjusts every claim, or that every employee wrongfully adjusts claims on a regular basis). It appears to the Court that under State Farm's scheme, a considerable percentage of policyholders is victimized by a wrongful denial of benefits, oftentimes when these policyholders are the most vulnerable. And it certainly appears to the Court that State Farm pursues an official corporate policy established to encourage such wrongful denial of benefits in situations where State Farm believes that it can be successfully accomplished.

83. Another effect of State Farm's policies is that it puts auto insurance companies who play by the rules at a competitive disadvantage, allowing State Farm to increase its market share or its profits (whichever it is putting the emphasis on), or a combination of both, by having an advantage that honest companies don't have: the shortchanging of policyholders on claim amounts that should be paid. As the Campbells demonstrated with expert testimony, this inevitably creates pressure on the honest companies to resort to the same sort of misconduct in

an attempt to stay even with State Farm, extending the damage to consumers throughout the auto insurance marketplace as a whole.

e. **Probability of Future Recurrence of State Farm's Misconduct**

84. The Court has already found that State Farm has carried out a persistent scheme of wrongful conduct. It would appear to have been extremely profitable, as the Campbells' experts on the insurance industry testified, and as various examples of the scheme in practice strongly support. Further, despite testimony from State Farm witnesses that the improper payout goals at the core of the scheme was assertedly "obsoleted" in 1992 (and again in 1994), the Campbells presented ample evidence that this incentive system (including its improper goals) — the engine that pressures adjusters to wrongfully deny benefits to consumers on a wide range of claims — remains in operation today. Only the documentation has changed, for appearances sake; as the Campbells proved with both internal company documents and through testimony of knowledgeable witnesses, the scheme is now carried out verbally, to avoid the creation of documents that might be damaging to the company in litigation.

85. To be sure, there was testimony from regional vice president Moskalski during Phase II that he had ordered employees in Utah and the two other States he oversees to start sending "peace of mind" letters to consumers in third-party liability situations like the one faced by the Campbells (i.e., letters to its insureds who have been sued in a third-party action, informing them that if State Farm decides to take the case to trial, State Farm will protect the insured

against any personal exposure, so long as an offer has been made to settle within the policy limits and so long as the insured cooperates in the defense of the case). But it is worth noting that other than Moskalski's self-serving testimony there was no evidence presented to the jury that either Moskalski or corporate headquarters has promulgated such a policy. There was no evidence that Mr. Moskalski did anything in writing, or in consultation with business lawyers. As the Court understands it, Mr. Moskalski was in the office of trial counsel preparing for his trial testimony and it was at that point, not long before the jury was to decide punitive damages, that Mr. Moskalski experienced a moment of enlightenment and, he testified, decided to adopt this new policy. That was the time and place when this change assertedly came into existence.

86. The Court does not find it surprising that the jury apparently was not particularly persuaded that this repentance was genuine. And to suggest that it was a "deathbed repentance," as did the Campbells' counsel in closing argument, seems if anything an understatement of the circumstances concerning this purported change. This testimony is just one example of the implausible nature of much of the testimony elicited from State Farm's employees in this case. State Farm's unrepentant attitude was evidenced throughout the trial, during which witness after witness testified to being "proud" of how State Farm had handled the claims against Curtis Campbell, and refused to admit any flaws, ever, of any kind in any of State Farm's past or present claim-handling policies — or that even a single claimant had ever been treated unfairly during State Farm's entire existence — despite the documentation to the

contrary drawn from State Farm's own files. Given the absence of credible evidence that, in fact, State Farm's policies have changed, and that the misconduct carried out toward Utah consumers during the past two decades has ended, the probability of recurrence of State Farm's misconduct appears extremely high.

f. **Relationship of the Parties**

87. The relationship of the parties, is fiduciary in nature. As noted in the Utah Court of Appeals decision in this case:

> This higher duty is imposed on the insurer because in a third-party situation, the insurer "controls the disposition of the claims against its insured, who relinquishes any right to negotiate on his own behalf." The insured is thus "wholly dependent" on the insurer to see that the insureds' interests are protected. . . . The insurance contract thus "creates a fiduciary relationship because of the trust and reliance placed in the insurer by the insured."

Campbell v. State Farm, 840 P.2d 130, 138 (Utah App. 1992).

88. Indeed, State Farm spends large sums each year advertising the "peace of mind" that it promises its customers, so there is little credibility to the claim that customers should not be expected to rely on a company such as State Farm to fairly carry out its fiduciary duties and to resist the temptation to betray insureds in the pursuit of easy profits. As late Chief Justice (then Judge) Burger recognized many years ago, "[p]unitive damages are particularly apt" where the trust put in a fiduciary "is intentionally and consciously disregarded, and exploited for unwarranted gain." Brown v. Coates, 253 F.2d 36, 40 (D.C. Cir. 1958). That trust was plainly abused in this case, and was abused pursuant to what the Court believes was a

conscious policy to do so on a regular basis to a wide range of insureds. In the Court's mind, this is another very substantial basis supporting the jury's award of punitive damages.

g. Amount of Actual Damages Awarded

89. The Court is of the opinion that it should issue a remittitur reducing the amount of punitive damages to $25 million on the basis of the seventh and final Crookston factor, "the amount of actual damages awarded," Crookston I, 817 P.2d at 808, which the Utah Supreme Court has held triggers certain presumptions based on the ratio between the punitive damages and actual damages. Id. at 810-12.

90. As the Court has indicated, the ratio factor is the sole reason for the remittitur.

91. As with the compensatory damages award, as remitted, post-judgment interest should run on this remitted punitive damages award from the date of the original judgment, August 8, 1996.

92. The Court acknowledges that the denominator of this 25-to-1 ratio — the $1 million in compensatory damages, as remitted by this Court and accepted by the Campbells — may be viewed as artificially low in that it does not capture the full amount of harm done to the Campbells as a result of State Farm's misconduct. For example, as a result of State Farm's bad-faith failure promptly to settle the claims against Curtis Campbell for the $50,000 policy limits, the judgment against Curtis Campbell following the exhaustion of all appeals in 1989, was $264,287. Arguably, at least that amount should be added to the denominator in the

calculation of the punitive/compensatory ratio. Any contrary approach, it could be argued, would leave a defendant free to engage in a course of intentional wrongdoing for years, pay up the compensatory damages just before trial, and by that means avoid the imposition of punitive damages assessed in proportion to the total history of wrongdoing. If this argument were adopted, the remitted $25 million punitive damages award would bear a ratio of approximately 19.8 to 1 ($25 million divided by $1,264,287).

3. Analysis Under BMW v. Gore

93. The framework set forth in BMW of North America, Inc. v. Gore, 116 S. Ct. 1589 (1996), for assessing federal substantive due process calls for analysis of three "guideposts": (1) the degree of reprehensibility of the defendant's conduct, 116 S. Ct. at 1599; (2) the ratio of punitive to actual damages, id. at 1601; and (3) the civil and criminal penalties that could be imposed for comparable misconduct. Id. at 1603.

94. With respect to reprehensibility, as already discussed, State Farm's high-level corporate scheme implicates virtually all the hallmarks of reprehensibility noted in Gore and must be regarded as deeply reprehensible.

95. With respect to the punitive/compensatory ratio, the U.S. Supreme Court has indicated that, for purposes of federal constitutional analysis, the ratio between punitive and compensatory damages does not impose a rigid cap on punitive damages awards, and that large

ratios are acceptable if a rational explanation for a given award exists. Thus in Gore, the Court went out of its way to reject any "categorical approach" — any "notion that the constitutional line is marked by a simple mathematical formula." Id. at 1602. The Court added that high ratios may be justifiable "in cases in which the injury is hard to detect," while recognizing that ratios in range of 500 to 1 should understandably trigger closer judicial scrutiny. Id. at 1602-03. Because at least several independent rational explanations exist in support of the punitive damage award in this case, Gore's ratio guidepost does not require reduction of the award based on a federal substantive due process analysis.

96. The final Gore guidepost, "the civil or criminal penalties that could be imposed for comparable misconduct," 116 S. Ct. at 1603 (emphasis added), does not require reduction of the punitive damage award. The penalties that could be imposed under Utah law for the fraudulent scheme that has been pursued by State Farm are enormous. Under the Unfair Claims Practices Act, Utah Code Ann. §§ 31A-26-301, et seq., State Farm could be fined $10,000 for each fraud committed on a Utah consumer.

97. Even more fundamentally, looking beyond the cumulative statutory fines that could be imposed in Utah based on thousands of individual instances of wrongfully denying benefits owed on claims, much greater penalties could be imposed based on the evidence of State Farm's broad pattern of consumer fraud in Utah: (1) State Farm's operations in Utah could be dissolved, or its license to operate suspended, see Utah Code Ann. §§ 31A-26-213, 76-3-201(2) & (3), 76-10-1602(ppp), and 76-10-1603.5(5); (2) State Farm's officers responsible for

the fraudulent scheme could be imprisoned, or at least removed for up to five years, see Utah Code Ann. § 76-3-303 (Gore noted that it is especially important, in considering comparable penalties, whether imprisonment is authorized in the criminal context); (3) State Farm could be forced to disgorge all the illicit profits from the entire scheme, plus be fined twice those illicit profits as a penalty, see Utah Code Ann. §§ 76-10-1602, et seq.; and (4) State Farm could be forced to publicize the fact that it and/or its officers had been criminally convicted of fraud, see Utah Code Ann. § 76-3-303, with obviously devastating effects on its business nationwide.

98. Certainly, the Court does not believe that the statutory and regulatory sanctions that could be brought against State Farm under Utah law are minimal, nor does the fact that these sanctions have to date not been pursued by the regulatory and prosecutorial authorities support the claim that the remitted amount of punitive damages is excessive. State Farm places considerable emphasis on the argument that the analysis should concern not the civil and criminal penalties that it could be subjected to under existing Utah law, but instead what penalties are likely as a practical matter, given past enforcement practices. But in Gore, the Supreme Court plainly indicated that the focus, in terms of assessing whether a wrongdoer has adequate prior notice of the scale of penalty that a given course of misconduct could trigger, is properly directed to "the civil or criminal penalties that could be imposed for comparable misconduct." 116 S. Ct. at 1603 (emphasis added). For example, the U.S. Court of Appeals for the D.C. Circuit recently applied this aspect of Gore in upholding against a federal

excessiveness attack a $37 million penalty assessed against a person who, for many years, had failed to disclose information about the control of a bank that was required to be disclosed under federal banking laws. Pharaon v. Board of Governors of the Federal Reserve, 135 F.3d 148, 156 (D.C. Cir. 1998), petition for cert. filed, July 15, 1998. The D.C. Circuit relied on the penalty that theoretically could be assessed under the relevant statute (12 U.S.C. § 1847(b)) — 8299 days of nondisclosure, at $25,000 per day for most of the period, and $1,000 a day for the remainder of the period, for a total of $111.5 million — without any showing that such maximum penalties had ever been assessed in the past, and without any contemporaneous explanation of why the regulators had picked the particular sum of $37 million as a penalty. Id. at 151-52, 156-57. If anything, the absence of any such aid from these authorities is a basis for enlarging the permissible punitive damages because of the seriousness and difficulty of parties such as the Campbells and their counsel, unassisted, taking a case of this nature all the way to trial. It requires the will of a David against a Goliath, or of a Rocky Balboa against an Apollo Creed, to stay the course and bring litigation such as this to the point where it rests today.

D. Motion for New Trial Based on Claim of "Passion or Prejudice"

99. State Farm's final argument on punitive damages is that, if this Court concludes that the jury's $145 million award is excessive, it must grant a new trial, as the excessiveness of the verdict can only be explained as the product of a flawed trial process that created an

atmosphere of passion and prejudice. As part of this argument, State Farm points to several statements by the Campbells' counsel in closing argument (never objected to), which State Farm asserts inflamed the jury into disregarding its fact-finding function, and it suggests that the jury was not serious in its deliberations. Here, State Farm also reiterates its objections to the jury's post-trial conduct. See State Farm Opening Memorandum at 112-17.

100. As already indicated by this Court in separately filed orders, there is no basis for such claims. This was a well-educated jury that was extraordinarily attentive during the trial and that discharged its duty with the utmost seriousness. The jurors sacrificed most of their summer plans, and suffered through considerable delays beyond the planned trial period, serving without complaint over a two-month period. The Campbells' counsel, while providing vigorous representation of their clients — matched equally by energetic and dedicated counsel for State Farm — made no effort to inflame the jury. The trial was pervaded by an overall atmosphere of fairness, with a focus on the evidence relevant to the issues rather than on appeals to emotion.

101. The fairness of the proceedings is confirmed by the fact that State Farm's highly competent trial counsel saw no need to raise the present objections to the comments of the Campbells' counsel while the trial was in progress. There is every indication that the jury deliberated carefully, as illustrated by its three separate requests to examine various pieces of evidence in the case; there is no evidence that the jury was in any way careless in the discharge of its duties. Further, the Court has issued a remittitur reducing the punitive damages award

by roughly 80 percent not because of any flaw in the jury or the trial process, and not because the jury's verdict was irrational as rendered based on the evidence that the jury considered, but based on the ratio factor of Crookston, in light of which the Court concludes that a 25-to-1 ratio is appropriate.

II. STATE FARM'S CLAIM OF ERROR ON THE SCOPE OF EVIDENCE

102. As part of its post-trial motions, State Farm takes the position that the evidence should have been narrowly limited to its specific treatment of the Campbells and that the wide range of evidence tending to establish that the mistreatment of the Campbells was part of a broader scheme — the evidence on State Farm's general practices, policies or patterns (including specific illustrative or corroborative examples) — should have been excluded. Because the foregoing summary of the evidence justifying the punitive damages necessarily required an extensive discussion of the types of evidence that State Farm contends should have been excluded, the Court believes that this is an appropriate place to address State Farm's claim of error with respect to this Court's rulings concerning the scope of Phase II evidence.

A. State Farm's Position Misconstrues the Rules of Evidence

103. Rule 402 provides that "all relevant evidence is admissible, unless it is excluded by a specific rule or law." Rule 401 gives a very broad definition of relevant evidence:

> "Relevant evidence" means any evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The evidence admitted at trial concerning State Farm's improper claim-handling schemes - its improper practices, policies and patterns, including specific corroborative examples — clearly meets the threshold standard for admissibility set by Rules 401 and 402. As supported by Edward L. Kimball and Ronald N. Boyce in Utah Evidence Law § 4-2 (1996), the application of Rules 401 and 402 here involves simple logic. Phase II of the trial (which followed findings of bad faith against State Farm by the jury in Phase I) involved the Campbells' claims of fraud, intentional infliction of emotional distress, punitive damages, and agency issues, along with State Farm's central assertion that the mistreatment of the Campbells was unintentional and simply the result of honest mistakes. Phase II involved, in particular, State Farm's insistence that it had no motive to decline a reasonable opportunity to settle the claims against Mr. Campbell or to intentionally mislead the Campbells concerning their excess exposure (to get them to acquiesce in State Farm's decision to gamble on a trial). State Farm contended, among other things, that it had no motivation to act contrary to the Campbells' best interests, and that the testimony of its former employee Ray Summers was not credible because State Farm had no motivation to act as Summers contended it had.

104. In order to prevail in Phase I of the trial, concerning the threshold issue of bad-faith claim handling, the Campbells did not have to prove intent, motive, absence of mistake, or the like. These subjects, however were critical to Phase II of the trial, on the Campbells' claims of fraud, intentional infliction of emotional damages, punitive damages, and agency.

Furthermore, as discussed in detail under Part I above, such evidence bears directly on several of the seven factors that the Crookston decisions require be considered in the assessment of punitive damages.

105. Accordingly, it was apparent to this Court in making its pretrial decisions concerning the admissibility of the so-called "other acts" evidence that the jury's consideration of this evidence in Phase II was not only necessary, but essential and strongly probative of several material issues lying at the heart of this controversy. The evidence in question met the Rule 401 and 402 relevancy standards, making it admissible unless excluded by another provision of law. State Farm claims that Rule 404(b) required exclusion.

106. Rule 404(b) provides:

> (b) Other crimes, wrongs or acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. (emphasis added)

107. Inasmuch as the evidence in question was neither offered nor admitted for a prohibited purpose, but solely for proper "other purposes" expressly recognized by Rule 404(b), the Court finds, as it has in the past, that Rule 404(b) did not require the exclusion of such evidence. (As noted in State v. Donorio, 935 P.2d 484, 490 n.4 (Utah 1997), the "other purposes" categories listed in the last sentence of Rule 404(b) are not exclusive. See also Utah Evidence Law, supra, § 4-41.)

108. In its Rule 404(b) argument, State Farm urges that the only evidence that was properly admissible in Phase II was evidence relating to the details of how the Campbell file was handled. Thus, State Farm insists, any broader evidence pointing to fault in its institutional claim-handling policies can only be viewed as evidence of "bad character," inviting the very sort of inference prohibited by Rule 404(b). Specifically, State Farm complains, "plaintiffs' trial counsel . . . invited the jury to draw from this evidence precisely the inference that Rule 404(b) forbids — that State Farm must have committed an act of bad faith in the present case because it has done so in so many other cases." State Farm Reply Memorandum at 27-28. In a related point, State Farm argues that the danger that this so-called "other acts" evidence would unfairly influence the jury's determination of bad faith was so great as to violate Rule 403, thus requiring a new trial on this ground as well. See State Farm Opening Memorandum, at 56-58.

109. The central problem with these arguments is that the question of whether State Farm acted in bad faith was decided by the first jury, months before Phase II of this trial. As set forth in jury instruction No. 25 of Phase II, without objection from State Farm:

> You are instructed that a previous jury in this case has found that a substantial likelihood exists that excess verdicts in favor of Slusher and the Ospitals would be rendered against Curtis Campbell in the Cache County case, and that State Farm acted unreasonably in not settling both of these claims against Mr. Campbell before the Cache County verdicts. This means that State Farm breached its duties of good faith and fair dealing and its fiduciary duty to Campbells to settle the claims against Curtis Campbell within the policy limits.

110. Given State Farm's success in getting a bifurcated trial, and given the jury's finding of bad faith in the Phase I proceeding in which the Campbells were not permitted to introduce any institutional evidence on its claim-handling procedures, there is simply no basis for State Farm's present Rule 404(b) objection that in Phase II of the trial, "plaintiffs' trial counsel . . . invited the jury to draw from this [other acts] evidence precisely the inference that Rule 404(b) forbids — that State Farm must have committed an act of bad faith in the present case because it had done so in many other cases." State Farm Reply Memorandum at 27-28. Such an inference was logically impossible in Phase II, as the parties stipulated to the jury (in instruction No. 25) that State Farm's breach of good faith duties had already been established in Phase I.

111. Thus, State Farm's success in achieving bifurcation of the threshold bad faith issues from the institutional case is itself sufficient to dispose of State Farm's present arguments. However, other major points are also worth adding in putting to rest State Farm's contention that it was treated unfairly by this Court's evidentiary rulings.

B. State Farm Sought Bifurcation on the Premise That Phase II Would Involve a Broad Scope of Institutional Evidence

112. Although bifurcated trials are the exception, at State Farm's insistence and over the strenuous objections of the Campbells, the Court allowed the bifurcation order of the prior judge, Judge Rokich, to stand, requiring the Campbells' claims to be tried in a bifurcated

proceeding to separate juries. State Farm designed the bifurcation, getting precisely what it asked for in terms of what would be covered in Phase I, and what would be reserved for Phase II. Although the Court recognized that it was excluding evidence relevant to the Phase 1 issues, it narrowly restricted the proof to the evidence of State Farm's treatment of the Campbells, with no consideration of State Farm's general claim-handling procedures, and the Campbells were required to establish State Farm's breach of good-faith duties under these heavy evidentiary restrictions.

113. From the Court's earliest involvement with this case, it understood that the purpose of Judge Rokich's bifurcation order was to separate the so-called "bad-faith phase" (Phase I) from what the parties termed the "institutional phase" of this trial (Phase II). Strenuously opposing bifurcation, the Campbells repeatedly urged this Court to reconsider Judge Rokich's decision. State Farm prevailed in its bifurcation arguments largely by pointing out that Phase II, covering the institutional evidence, would involve a very lengthy trial, as it would deal with State Farm's corporate policies and practices — so that bifurcation would save substantial resources in the event that the jury found no bad-faith claim handling. Thus, State Farm was fully aware, when it successfully urged this Court to retain the bifurcated trial plan and keep the threshold bad-faith issue separate from the complex institutional issues, that the Campbells' institutional case would be relevant to the issues to be decided in Phase II, if the jury returned a verdict for the Campbells in Phase I. The importance and necessity of the evidence introduced by the Campbells in their Phase II institutional case was well understood throughout

this case. There is simply no basis for any claim of prejudice or unfairness by State Farm, and it was necessary to admit such evidence in order to afford the Campbells a full and fair opportunity to litigate their claims under applicable law.

C. The Institutional Evidence Was Necessary to Explore Why State Farm Would Mistreat the Campbells

114. The central issue in Phase II, as this Court understood it from the beginning, was the question of why did State Farm do what it did to the Campbells — why it committed the bad-faith claim handling that led to the excess verdict that presented the Campbells with the possibility of financial ruin and all the attendant consequences. The possible answers were: (1) it was inexplicable, there is simply no explanation; (2) it was a foolish or honest mistake; or (3) it was a result of two corporate policies, one to encourage or enforce a requirement that State Farm's claims handling be improperly used to enhance corporate profits, and second to conceal this profitable policy to evade legal and regulatory accountability for it.

115. Stated simply and in short form, that third possibility was the plaintiffs' institutional case, the record evidence in support of which is detailed at length in the Campbells' Statement of Facts and Memorandum Regarding Punitive Damage Issues at 12-143, and in their Surreply Memorandum at 13-41, and which the Court has summarized in Part I, above. It would be fair to say that the Campbells' ability to articulate this third theory has improved, or perhaps the Court's understanding of what they have been saying all along has been clarified. But the

essence of the institutional case has been in this case as long as this judge has been assigned to it.

D. The Court Invested a Great Amount of Time Carefully Crafting Evidentiary Rulings That Were Fair to Both Sides

116. In spite of the arguments that State Farm made in successfully obtaining bifurcation (urging deferral of the institutional case until Phase II), after the Campbells prevailed in Phase I, State Farm argued that little, if any, of the institutional evidence that had been contemplated for Phase II should be admitted. As a result, during the several months between Phase I and Phase II, a large number of motions in limine and other requests were made to the Court seeking pretrial resolution of evidentiary issues concerning the scope of Phase II. These matters were thoroughly and extensively briefed and argued in numerous hearings before this Court involving multiple motions in limine and several hearings. Shortly before Phase II began, the Court conducted four days of hearings addressing, inter alia, State Farm's arguments that the institutional case was inappropriate for consideration by the jury under Rules 404(b) and 403. The Court carefully considered and ruled on each of the numerous pending motions in limine. All told in this case, the Court conducted more than ten pretrial hearings involving evidentiary issues in whole or in part, consuming more than fifteen days.

117. Contrary to State Farm's current assertions, the Court did not permit the Campbells boundless freedom in presenting their Phase II evidence. Substantial amounts of evidence that the Campbells strongly desired to present were excluded by the Court, while the use of much

of their other evidence was markedly restricted. At the conclusion of this extensive pretrial effort, the Court issued several detailed orders that established evidentiary parameters tightly controlling the range of proof that would be allowed the Campbells in establishing their claims. Even where the Court indicated its intent to receive general categories of evidence, State Farm retained its right to object to specific items of evidence when proffered at trial, as well as its right to contest admissibility under Rule 403 of specific items of evidence. See Order Denying Various Motions of State Farm to Exclude Plaintiffs' Evidence, filed May 28, 1996 (hereinafter "Rule 404(b) Order"), at 5, ¶ 9. The trial record reflects that State Farm exercised these rights on many occasions during the trial.

118. The Court believes that its rulings, particularly its Rule 404(b) Order, were sound and stands by them and incorporates them by reference, to the extent not modified by later orders and not inconsistent with this order. In those orders, this Court found the Campbells' institutional case, involving evidence of State Farm's overall claims handling policies and practices, to be highly probative, indeed essential to numerous material issues before the jury including: (1) intent, (2) reckless disregard, (3) absence of mistake, (4) agency, (5) existence of outrageous conduct, (6) existence of a wrongful pattern or practice underlying State Farm's torts, and (7) reprehensibility of any such wrongful pattern or practice. See Rule 404(b) Order, at 2-3 ¶ 3 (evidence "necessary" for consideration of punitive damages, as factfinder "must" consider this evidence under Crookston); id. at 3 ¶ 4 (evidence "must" be admitted to permit plaintiffs to prove "each element of fraud"); id. at 3 ¶ 5 (evidence "must" be admitted to

permit plaintiffs to prove elements of State Farm's intent relevant to claim of intentional infliction of emotional distress); id. at 3 ¶ 6 (evidence "directly bears on" State Farm's defense "that Campbell consented to the trial of the underlying case" and that it "relied in good faith on Wendell Bennett's opinions"); id. at 4¶ 7 (finding that evidence "is helpful to overcome the disadvantage" to plaintiffs of the evidence destroyed by State Farm, and that plaintiffs "would be prejudiced" by exclusion of such evidence); id. at 4 ¶ 8 (concluding that, on balance, "the pattern and practice evidence is of high probative value and importance to plaintiffs' claims, and that serious prejudice to plaintiffs would result if such evidence were excluded. The court further finds that the probative value is not outweighed by the danger of unfair prejudice or confusion"). As discussed above, these grounds for admission clearly fit within the "other purposes" permitted under Rule 404(b).

119. Having made those rulings, the Court allowed State Farm to aggressively cross-examine the Campbells' witnesses, to present evidence in its own defense from a wide array of experts testifying to the absence of such policies, and otherwise to attempt to establish the baselessness of the Campbells' institutional case. For their part, the Campbells argued that the bad-faith handling of the Campbell file was best explained as a consequence of institutional policies established long ago at State Farm to enhance corporate profits by pressuring and enticing claims adjusters systematically to deny policyholders their insurance benefits, and then to seek to evade accountability for that profit scheme through a wide range of illegal and unfair tactics.

The Campbells presented compelling evidence that supported this view, as already summarized.

120. The Court believes that the institutional case was fully and fairly tried. Both sides had an ample opportunity to present their evidence on whether the Campbells' institutional explanation of what produced the injury to them was to be believed or not to be believed. And the Court is confident that the rulings it made allowing the Campbells' institutional evidence to come in were proper.

E. Much of The Evidence of Which State Farm Now Complains Was Admitted Because of State Farm's Strategy at Trial

121. It is worth emphasizing that, in permitting the Campbells to put on their institutional case, the Court tightly controlled the range of proof that would be allowed, limiting the Campbells in their case in chief to evidence directly relevant to the nature of the auto company's claim-handling policies and practices. In support of State Farm's assertions that this Court presided over a "boundless inquisition into [its] business practices," State Farm Opening Memorandum at 32, and what amounted to a "kitchen-sink" approach to the case, State Farm Surreply Memorandum at 48, State Farm points to a variety of other evidence ultimately involved by the jury which considered broader aspects of State Farm's business practices. However, State Farm does not properly acknowledge that this evidence to which it now objects was admitted: (a) only as rebuttal or impeachment evidence (to attack the credibility of State Farm experts who purported to be extremely knowledgeable and would

certainly have been aware if State Farm was engaging in such practices); or (b) as a result of various evidentiary doors that were opened by State Farm during trial, that the Court had previously closed (in some instances State Farm proceeded to open such doors even after being explicitly warned by the Court during the trial that such would be the consequence); or (c) because State Farm's own counsel elected to admit the evidence; or (d) without objection by State Farm when the evidence was offered.

122. With respect to the impeachment and rebuttal evidence in particular, the Court put State Farm on notice prior to the start of Phase II that this type of evidence would be permitted in response to the testimony of expert witnesses whom State Farm planned to call, and whom had been previously deposed. See Order Regarding Evidence of Other Cases, filed May 28, 1996, at 2-4. In spite of this ruling, State Farm chose to put on several insurance regulators whose level of knowledge of State Farm's business operation was extremely open to question.

123. The testimony offered by one of these witnesses, Mr. Rogers (from State Farm's home state of Illinois) is illustrative. Mr. Rogers testified on direct examination that if State Farm were involved in any wrongful denial of insurance benefits or other unfair practices, it would "absolutely" have come to his attention, but that it had not — so that State Farm must have blameless corporate policies. He declared: "I find it incomprehensible to come to any other conclusion." 24 Tr. 52. He asserted that he routinely reviewed pending court cases against insurance companies, including State Farm, and testified that he knew of no bad-faith verdicts, punitive damage verdicts, or class actions (except a very old California one) against State

Farm. 24 Tr. 66-71. He further testified that he did not know of a single claimant who had ever been treated unfairly by State Farm. 24 Tr. 63. State Farm elicited similar testimony from other regulators, who testified that, having attended a number of national meetings with regulators from around the country and having spoken by telephone with regulators from all over the country, they were unaware of any concerns over State Farm's practices or of even a single claimant who had been treated unfairly. 24 Tr. 92; 25 Tr. 108; 30 Tr. 57.

124. In advance of Phase II, the Campbells disclosed that they had uncovered a large number of cases from around the nation involving court decisions in which State Farm had been found guilty of deceptive practices, bad faith and/or liability for punitive damages, as well as a number of class actions challenging State Farm's claim-handling practices. Being fully aware of this, State Farm still chose to present testimony from Mr. Rogers and other regulators essentially claiming that, if there were any concerns over State Farm's practices, they would be aware of them — and that they were not aware of any such concerns. Mr. Rogers, the Illinois regulator, was confronted with two recent, highly publicized class actions from Illinois involving many thousands of people who claimed to have been mistreated by State Farm's claim-handling practices, where in State Farm had agreed to make payments to members of the class. A former Texas regulator was confronted with appellate decisions from Texas in which State Farm had been found liable for fraud, bad faith, deceptive trade practices and/or had been held liable for punitive damages. 25 Tr. 128-29. Other cases were also properly used to impeach and rebut the contentions of these and other witnesses.

125. State Farm also relied on its employees as part of its defense to the Campbells' institutional case. State Farm's own regional vice president (the highest ranking official at State Farm to testify at trial), Buck Mosklaski, gave a glowing testimonial concerning the fairness of State Farm's claim-handling practices. He also testified that in his entire career he had learned of no insured or claimant who had ever been treated unfairly by State Farm. During discovery, he had been formally designated as a Rule 30(b)(6) witness to testify about State Farm's awareness, if any, of punitive damage awards, and he swore under oath (speaking on behalf of himself and State Farm) that he was not aware of any punitive damage awards or bad faith verdicts. Much as with the regulators, this witness was impeached with appellate decisions from Texas affirming punitive damage and bad faith verdicts, which involved State Farm's conduct during the same time he was deputy regional vice president in Texas, with responsibility for claim handling.

126. Having been fairly forewarned, State Farm chose to present such witnesses, having been alerted in advance that this evidence would be met with a considerable body of impeachment and rebuttal evidence from the Campbells. The record will reflect that nevertheless, the Court restricted the manner in which impeachment evidence came in, and how it was used.

F. The Court's Rulings Are Not Contrary to The Doporto Decision

127. In its attack on this Court's evidentiary rulings, State Farm places great emphasis on a criminal case involving a sex offender, State v. Doporto, 395 P.2d 484 (Utah 1997). Doporto

does not bear the emphasis that State Farm suggests. Doporto has been clarified in a subsequent Utah Supreme Court case, State v. Pearson, 943 P.2d 1347 (Utah 1997). In Pearson, the Utah Supreme Court upheld an aggravated murder conviction against a Rule 404(b) objection, in spite of the trial court's admission of evidence of prior involvement with the Indiana police, including references to a drug sale. The Court found such evidence properly admitted as relevant to motive and intent. Further the Utah Supreme Court has recently approved an amendment to Rule 404, effective February 11, 1998, returning the law to its pre-Doporto status. The Court addresses the Doporto point to cover any possibility that this recent change might be held to operate purely prospectively, even with respect to trials (like this one) held before Doporto was handed down.

128. The standard for admissibility set out in Doporto, assuming that it fully applies to this civil case (which seems doubtful), has easily been met here. The Doporto opinion indicates that the Court should first determine that the "other acts" evidence is actually necessary, i.e., "it cannot be used to prove a point not really contested." Id. at 491. Second, the evidence must be strongly probative of a material issue: "a probativeness that cannot serve as a ruse for showing that the defendant's propensity is such that he is likely to have committed the kind of crime charged." Id. Such findings were at the heart of this Court's pretrial rulings. For example, in the Rule 404(b) Order of May 28, 1996, the Court made the following finding, among others:

> 8. Acting upon State Farm's motion, this case was bifurcated, and plaintiffs' evidence in the first trial was substantially limited. Though the Wrongful Pattern and Practice Evidence was relevant to plaintiffs' claims of bad faith under Rule 402, Utah Rules of Evidence, at State Farm's request the Court excluded the evidence with the expectation that it would be considered in the second trial. This was the primary reason for bifurcating this case for trial. Even with this restriction of evidence (which primarily benefited State Farm), the jury in the first trial found against State Farm on all questions on the verdict. In light of this verdict, the Court finds that the pattern and practice evidence is of high probative value and importance to the plaintiffs' claims and that serious prejudice would result if such evidence were excluded. The Court further finds that the probative value is not outweighed by the danger of unfair prejudice or confusion.

129. While the Court, obviously, did not have the Doporto decision (handed down after trial) in mind in making these findings, as a result of the extensive pretrial evidentiary proceedings, this Court's consideration of the Rule 404(b) issues more than met the Doporto standard. It was this Court's view, which has only been bolstered by witnessing the evidence at trial, that the so-called "other acts" evidence was not only necessary, but essential, to the several vigorously contested material issues discussed above. This evidence was plainly neither offered nor received for a purpose prohibited under Rule 404(b), nor as a ruse for such an improper purpose, but was strongly and highly probative of the several material issues central to the resolution of this controversy previously discussed. The Court finds that its rulings and findings in this case were wholly consistent with both the letter and the spirit of Doporto. This Court's careful pretrial weighing of evidentiary issues not only satisfied, but far exceeded, anything that Doporto might require.

G. Individual Rulings on Evidence Must be Viewed in the Full Context of the Case and Not in Isolation

130. In one of its orders issued on May 28, 1996, just before Phase II of the trial, the Court made observations that merit repeating in connection with this Rule 404(b) analysis:

> [None] of the court's other orders relating to rulings on motions in limine and other evidentiary matters can properly be considered in isolation. During the course of this case, the court has been called upon to decide a large number of evidentiary issues. Various means have been used by the court and the parties to present and treat these matters including numerous motions in limine, numerous hearings (including some evidentiary hearings) and extensive briefing and oral argument.
>
> * * * *
>
> A large number of evidentiary issues have been strenuously argued and resisted on both sides of this controversy, with the court having ruled both for and against each side on numerous occasions. In doing so, the court has spent many days carefully considering the issues, the equities and the interests of justice and fairness on both sides. The court has worked very hard to exercise its best judgment and discretion in ruling on very difficult and complex issues in balancing the various interests and considerations in having this case and the parties' claims and defenses presented fairly and even-handedly. In doing so, the court has kept in mind the "big picture" in this case, has been mindful of past rulings on evidentiary issues and past positions taken by the parties, so that the specific rulings on various evidentiary issues and other issues relating to trial of this matter fit within an overall approach consistent with fairness and equity.
>
> Accordingly, it would not be accurate or fair to view any evidentiary or other discretionary ruling of this court in isolation or in connection with a small number of other rulings. To accurately assess this order or any other evidentiary or trial related orders, such order should be viewed in connection with all of the other evidentiary or trial-related orders that have been issued by this court in this case. (See Order Excluding Testimonies of Ivie, Glauser and Thornley.)

131. These observations are equally applicable to the rulings made during Phase II of the trial, and to this Court's post-trial rulings, as a general matter.

132. This Court is satisfied, particularly with the added benefit of hindsight, that its evidentiary rulings were sound, that the case was fairly tried, and that State Farm's motion for a new trial based on its evidentiary rulings concerning the scope of the Phase II evidence should be denied.

III. CONCLUSION

133. It is not feasible for the Court to set forth all of the extensive evidence in the case which supports the Court's findings, conclusions and order. The record is simply too large. The Court has attempted to describe the most significant evidence in summary form with only a partial description of the mass of specific evidence.

134. Based on the foregoing findings and conclusions, the Court is satisfied that there was substantial evidence sufficient to support a jury finding of the requisite mental state and all other elements of a punitive damage award, as well as the amount of punitive damages awarded by the jury. Additionally, the Court has independently reviewed the punitive damage award in light of the evidence, and concludes that the award was justified under the first six factors of Crookston. However, based solely upon Crookston's ratio factor, as set forth above, the Court grants State Farm's motion for a remittitur of the punitive damage award

down to an amount of $25,000,000.00. In the event that the Campbells had chosen not to accept the remittitur, the Court would alternatively have granted State Farm's motion for a new trial.

135. The Court also rejects State Farm's arguments with respect to the scope of the evidence admitted in Phase II for the reasons stated.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. State Farm's motion for judgment n.o.v. on punitive damages is hereby denied.

2. State Farm's motion for a remittitur regarding the punitive damages is granted. The principal amount of the judgment entered August 8, 1996, based on the punitive damages awarded jointly to Curtis and Inez Campbell, shall be amended and reduced to $25 million, with post-judgment interest continuing to run on this amount from August 8, 1996.

3. State Farm's motion for new trial based on punitive damages is hereby denied.

4. State Farm's motion for new trial based on evidentiary rulings is hereby denied.

DATED this 3 day of ~~July~~ August, 1998.

BY THE COURT:

William B. Bohling
District Judge

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.
DATE: 8/3/98
DEPUTY COURT CLERK

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the Court's Findings, Conclusions and Order Regarding Punitive Damages and Evidentiary Rulings was hand delivered to:

Stuart H. Schultz
STRONG & HANNI
9 Exchange Place, Suite 600
Salt Lake City, Utah 84111

on July 31, 1998
and was mailed, postage prepaid, addressed to

W. Scott Barrett
BARRETT DAINES & WYATT
108 North Main, #200
Logan, Utah 84321

this 3rd day of ~~July~~ August, 1998.