Punitive Damages and Due Process

Eichenseer v. Reserve Life Insurance Co., 881 F.2d 1355 (5th Cir. 1989). During the 1988-89 Term, the Supreme Court concluded that punitive damages were not controlled by the Eighth Amendment's provision governing excessive fines. Several Supreme Court Justices and academics, however, have noted both that the Due Process Clauses of the Fifth and Fourteenth Amendments may provide limitations. Despite the suggestion of a constitutional limitation, the Court refused to grant review on several cases that presented the issue. Meanwhile, the circuit and state courts continue to struggle with the issue. In *Eichenseer*, the Fifth Circuit Court of Appeals upheld a $500,000 award of punitive damages against a challenge that the award violated due process requirements.

The trial court found that the insurer acted in bad faith in delaying payment of a medical claim. The court awarded $1000 in compensatory damages and $500,000 in punitive damages. The insurer appealed, arguing the punitive damages award violated its right to due process under the Fourteenth Amendment.

The court of appeals rejected the argument on three grounds. First, the court noted that state case law provided the insurer with adequate notice of the type of conduct which would result in punitive damage awards. Second, it found that the insurer had prior notice because it previously was liable for punitive damages for mishandling the investigation of a claim. Third, the court suggested that the trial court had carefully followed state law in assessing damages. It further noted that the state law provided for consideration of several factors in setting damages such as the deterrent effect of the award on the defendant and others, the financial worth of the defendant, the degree of the offense, the defendant's motive, and the overall justice of the award. On this basis, the court concluded there was not a violation of due process rights.

Excess Coverage Insurer's Duty to Defend

Harville v. Twin City Fire Insurance Co., 885 F.2d 276 (5th Cir. 1989). Despite a provision in an excess coverage insurance policy that provided that the excess coverage insurer had a duty to defend when the primary insurer did not provide coverage, the Fifth Circuit Court of Appeals concluded that the primary insurer's insolvency did not require the excess coverage insurer to defend the insured. In a prior suit, the plaintiff sued a manufacturer for damages resulting from a pump explosion. The manufacturer had a primary insurance policy with a limit of $300,000. It also carried an excess coverage policy with a limit of $5 million. The primary insurance policy contained a provision requiring the insurer to defend. Likewise, the excess coverage insurance stated that the insurer would defend if the claim was within the coverage and "no underlying insurer [was] obligated to defend." After the suit was filed, the primary insurer became insolvent. The lawyer for the manufacturer later withdrew from representation and the excess coverage