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Nickerson V. Stonebridge Could Mean Higher Damages Awards, *Law360*

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Recently, in Nickerson v. Stonebridge Life Insurance Co., the California Supreme Court held that punitive damages awards are constitutionally permissible and to the extent Brandt[1] fees are awarded, either by verdict or by the trial court post verdict, they must be included in the calculation of the punitive-to-compensatory damages ratio analysis. Nickerson also provides guidance concerning the constitutionality of punitive damages awards. While there is no bright line rule governing this issue, it is rare that an award that exceeds a single-digit ratio will satisfy due process. At first glance, the "cap" on the punitive-to-compensatory damages ratio may seem beneficial to insurers. However, the inclusion of Brandt fees as compensatory damages may result in more punitive damages awards being deemed reasonable assuming they are not grossly disproportionate to corresponding compensatory damages awards. Claims representatives and coverage counsel must be mindful of the potential increased exposure.

The Underlying Action in Nickerson

Plaintiff Thomas Nickerson, who is paralyzed from the chest down, suffered a severe leg injury when he fell from the wheelchair lift on his van. He was taken to a veteran's hospital for medical care at no cost. Nickerson was hospitalized for 109 days. After discharge, Nickerson sought benefits from Stonebridge Life Insurance Co. under an indemnity benefit policy for each day he was confined in a hospital for the necessary care and treatment of a covered injury. Invoking the policy's definition of "necessary treatment," Stonebridge determined, without consulting the views of Nickerson's treating physicians, his hospitalization was medically necessary for only 18 days of his stay.

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