

GRIM SHAW v. FORD MOTOR CO.

119 Cal. App. 3d 757

(Excerpted with citations omitted)

A 1972 Ford Pinto hatchback automobile unexpectedly stalled on a freeway, erupting into flames when it was rear ended by a car proceeding in the same direction. Mrs. Lilly Gray, the driver of the Pinto, suffered fatal burns and 13-year-old Richard Grimshaw, a passenger in the Pinto, suffered severe and permanently disfiguring burns on his face and entire body. Grimshaw and the heirs of Mrs. Gray (Grays) sued Ford Motor Company and others. Following a six-month jury trial, verdicts were returned in favor of plaintiffs against Ford Motor Company. Grimshaw was awarded \$2,516,000 compensatory damages and \$125 million punitive damages; the Grays were awarded \$559,680 in compensatory damages. On Ford's motion for a new trial, Grimshaw was required to remit all but \$3 1/2 million of the punitive award as a condition of denial of the motion.

Ford appeals from the judgment and from an order denying its motion for a judgment notwithstanding the verdict as to punitive damages. Grimshaw appeals from the order granting the conditional new trial and from the amended judgment entered pursuant to the order. The Grays have cross-appealed from the judgment and from an order denying leave to amend their complaint to seek punitive damages.

Ford assails the judgment as a whole, assigning a multitude of errors and irregularities, including misconduct of counsel, but the primary thrust of its appeal is directed against the punitive damage award. Ford contends that the punitive award was statutorily unauthorized and constitutionally invalid. In addition, it maintains that the evidence was insufficient to support a finding of malice or corporate responsibility for malice.

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FACTS:

In November 1971, the Grays purchased a new 1972 Pinto hatchback manufactured by Ford in October 1971. The Grays had trouble with the car from the outset. During the first few months of ownership, they had to return the car to the dealer for repairs a number of times. Their car problems included excessive gas and oil consumption, down shifting of the automatic transmission, lack of power, and occasional stalling. It was later learned that the stalling and excessive fuel consumption were caused by a heavy carburetor float.

On May 28, 1972, Mrs. Gray, accompanied by 13-year-old Richard Grimshaw, set out in the Pinto from Anaheim for Barstow to meet Mr. Gray. The Pinto was then 6 months old and had been driven approximately 3,000 miles. Mrs. Gray stopped in

San Bernardino for gasoline, got back onto the freeway (Interstate 15) and proceeded toward her destination at 60-65 miles per hour. As she approached the Route 30 off-ramp where traffic was congested, she moved from the outer fast lane to the middle lane of the freeway. Shortly after this lane change, the Pinto suddenly stalled and coasted to a halt in the middle lane. It was later established that the carburetor float had become so saturated with gasoline that it suddenly sank, opening the float chamber and causing the engine to flood and stall. A car traveling immediately behind the Pinto was able to swerve and pass it but the driver of a 1962 Ford Galaxie was unable to avoid colliding with the Pinto. The Galaxie had been traveling from 50 to 55 miles per hour but before the impact had been braked to a speed of from 28 to 37 miles per hour.

At the moment of impact, the Pinto caught fire and its interior was engulfed in flames. According to plaintiffs' expert, the impact of the Galaxie had driven the Pinto's gas tank forward and caused it to be punctured by the flange or one of the bolts on the differential housing so that fuel sprayed from the punctured tank and entered the passenger compartment through gaps resulting from the separation of the rear wheel well sections from the floor pan. By the time the Pinto came to rest after the collision, both occupants had sustained serious burns. When they emerged from the vehicle, their clothing was almost completely burned off. Mrs. Gray died a few days later of congestive heart failure as a result of the burns. Grimshaw managed to survive but only through heroic medical measures. He has undergone numerous and extensive surgeries and skin grafts and must undergo additional surgeries over the next 10 years. He lost portions of several fingers on his left hand and portions of his left ear, while his face required many skin grafts from various portions of his body. Because Ford does not contest the amount of compensatory damages awarded to Grimshaw and the Grays, no purpose would be served by further description of the injuries suffered by Grimshaw or the damages sustained by the Grays.

Design of the Pinto Fuel System:

In 1968, Ford began designing a new subcompact automobile[,] which ultimately became the Pinto. Mr. Iacocca, then a Ford vice president, conceived the project and was its moving force. Ford's objective was to build a car at or below 2,000 pounds to sell for no more than \$2,000.

- Ordinarily marketing surveys and preliminary engineering studies precede the styling of a new automobile line. Pinto, however, was a rush project, so that styling preceded engineering and dictated engineering design to a greater degree than usual. Among the engineering decisions dictated by styling was the placement of the fuel tank. It was then the preferred practice in Europe and Japan to locate the gas tank over the rear axle in subcompacts because a small vehicle has less "crush space" between the rear axle and the bumper than larger cars. The Pinto's styling, however, required the tank to be placed behind the rear axle leaving only 9 or 10 inches of "crush space" –

far less than in any other American automobile or Ford overseas subcompact. In addition, the Pinto was designed so that its bumper was little more than a chrome strip, less substantial than the bumper of any other American car produced then or later. The Pinto's rear structure also lacked reinforcing members known as "hat sections" (two longitudinal side members) and horizontal cross-members running between them such as were found in cars of larger unitized construction and in all automobiles produced by Ford's overseas operations. The absence of the reinforcing members rendered the Pinto less crush resistant than other vehicles. Finally, the differential housing selected for the Pinto had an exposed flange and a line of exposed bolt heads. These protrusions were sufficient to puncture a gas tank driven forward against the differential upon rear impact.

Crash Tests:

During the development of the Pinto, prototypes were built and tested. Some were "mechanical prototypes" which duplicated mechanical features of the design but not its appearance while others, referred to as "engineering prototypes," were true duplicates of the design car. These prototypes as well as two production Pintos were crash tested by Ford to determine, among other things, the integrity of the fuel system in rear-end accidents. Ford also conducted the tests to see if the Pinto as designed would meet a proposed federal regulation requiring all automobiles manufactured in 1972 to be able to withstand a 20-mile-per-hour fixed barrier impact without significant fuel spillage and all automobiles manufactured after January 1, 1973, to withstand a 30-mile-per-hour fixed barrier impact without significant fuel spillage.

The crash tests revealed that the Pinto's fuel system as designed could not meet the 20-mile-per-hour proposed standard. Mechanical prototypes struck from the rear with a moving barrier at 21 miles per hour caused the fuel tank to be driven forward and to be punctured, causing fuel leakage in excess of the standard prescribed by the proposed regulation. A production Pinto crash tested at 21 miles per hour into a fixed barrier caused the fuel neck to be torn from the gas tank and the tank to be punctured by a bolt head on the differential housing. In at least one test, spilled fuel entered the driver's compartment through gaps resulting from the separation of the seams joining the rear wheel wells to the floor pan. The seam separation was occasioned by the lack of reinforcement in the rear structure and insufficient welds of the wheel wells to the floor pan.

Tests conducted by Ford on other vehicles, including modified or reinforced mechanical Pinto prototypes, proved safe at speeds at which the Pinto failed. Where rubber bladders had been installed in the tank, crash tests into fixed barriers at 21 miles per hour withstood leakage from punctures in the gas tank. Vehicles with fuel tanks installed above rather than behind the rear axle passed the fuel system integrity test at 31-miles-per-hour fixed barrier. A Pinto with two longitudinal hat

sections added to firm up the rear structure passed a 20-mile-per-hour rear impact fixed barrier test with no fuel leakage.

The Cost to Remedy Design Deficiencies:

When a prototype failed the fuel system integrity test, the standard of care for engineers in the industry was to redesign and retest it. The vulnerability of the production Pinto's fuel tank at speeds of 20 and 30-miles-per-hour fixed barrier tests could have been remedied by inexpensive "fixes," but Ford produced and sold the Pinto to the public without doing anything to remedy the defects. Design changes that would have enhanced the integrity of the fuel tank system at relatively little cost per car included the following: Longitudinal side members and cross members at \$2.40 and \$1.80, respectively; a single shock absorbent "flak suit" to protect the tank at \$4; a tank within a tank and placement of the tank over the axle at \$5.08 to \$5.79; a nylon bladder within the tank at \$5.25 to \$8; placement of the tank over the axle surrounded with a protective barrier at a cost of \$9.95 per car; substitution of a rear axle with a smooth differential housing at a cost of \$2.10; imposition of a protective shield between the differential housing and the tank at \$2.35; improvement and reinforcement of the bumper at \$2.60; addition of eight inches of crush space a cost of \$6.40. Equipping the car with a reinforced rear structure, smooth axle, improved bumper and additional crush space at a total cost of \$15.30 would have made the fuel tank safe in a 34 to 38-mile-per-hour rear-end collision by a vehicle the size of the Ford Galaxie. If, in addition to the foregoing, a bladder or tank within a tank were used or if the tank were protected with a shield, it would have been safe in a 40 to 45-mile-per-hour rear impact. If the tank had been located over the rear axle, it would have been safe in a rear impact at 50 miles per hour or more.

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Management's Decision to Go Forward With Knowledge of Defects:

The idea for the Pinto, as has been noted, was conceived by Mr. Iacocca, then executive vice president of Ford. The feasibility study was conducted under the supervision of Mr. Robert Alexander, vice president of car engineering. Ford's Product Planning Committee, whose members included Mr. Iacocca, Mr. Robert Alexander, and Mr. Harold MacDonald, Ford's group vice president of car engineering, approved the Pinto's concept and made the decision to go forward with the project. During the course of the project, regular product review meetings were held which were chaired by Mr. MacDonald and attended by Mr. Alexander. As the project approached actual production, the engineers responsible for the components of the project "signed off" to their immediate supervisors who in turn "signed off" to their superiors and so on up the chain of command until the entire project was approved for public release by Vice Presidents Alexander and MacDonald and ultimately by Mr. Iacocca. The Pinto crash tests results had been

forwarded up the chain of command to the ultimate decision-makers and were known to the Ford officials who decided to go forward with production.

Harley Copp, a former Ford engineer and executive in charge of the crash testing program, testified that the highest level of Ford's management made the decision to go forward with the production of the Pinto, knowing that the gas tank was vulnerable to puncture and rupture at low rear impact speeds creating a significant risk of death or injury from fire and knowing that "fixes" were feasible at nominal cost. He testified that management's decision was based on the cost savings[,] which would inure from omitting or delaying the "fixes."

Mr. Copp's testimony concerning management's awareness of the crash tests results and the vulnerability of the Pinto fuel system was corroborated by other evidence. At an April 1971 product review meeting chaired by Mr. MacDonald, those present received and discussed a report (exhibit 125) prepared by Ford engineers pertaining to the financial impact of a proposed federal standard on fuel system integrity and the cost savings which would accrue from deferring even minimal "fixes."² The report refers to crash tests of the integrity of the fuel system of Ford vehicles and design changes needed to meet anticipated federal standards. Also in evidence was a September 23, 1970, report (exhibit 124) by Ford's "Chassis Design Office" concerning a program "to establish a corporate [Ford] position and reply to the government" on the proposed federal fuel system integrity stand ard which included zero fuel spillage at 20 miles per hour fixed barrier crash by January 1, 1972, and 30 miles per hour by January 1, 1973. The report states in part: "The 20 and 30 mph rear fixed barrier crashes will probably require repackaging the fuel tanks in a protected area such as above the rear axle. This is based on moving barrier crash tests of a Chevelle and a Ford at 30 mph and other Ford products at 20 mph. Currently there are no plans for forward models to repackage the fuel tanks. Tests must be conducted to prove that repackaged tanks will live without significantly strengthening rear structure for added protection." The report also notes that the Pinto was the "[smallest] car line with most difficulty in achieving compliance." It is reasonable to infer that the report was prepared for and known to Ford officials in policy-making positions.

The fact that two of the crash tests were run at the request of the Ford chassis and vehicle engineering department for the specific purpose of demonstrating the advisability of moving the fuel tank over the axle as a possible "fix" further corroborated Mr. Copp's testimony that management knew the results of the crash tests. Mr. Kennedy, who succeeded Mr. Copp as the engineer in charge of Ford's crash testing program, admitted that the test results had been forwarded up the chain of command to his superiors.

Finally, Mr. Copp testified to conversations in late 1968 or early 1969 with the chief assistant research engineer in charge of cost-weight evaluation of the Pinto, and to a later conversation with the chief chassis engineer who was then in charge of crash testing the early prototype. In these conversations, both men expressed concern

about the integrity of the Pinto's fuel system and complained about management's unwillingness to deviate from the design if the change would cost money.

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FORD'S APPEAL

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On the issue of punitive damages, Ford contends that its motion for judgment notwithstanding the verdict should have been granted because the punitive award was statutorily unauthorized and constitutionally invalid and on the further ground that the evidence was insufficient to support a finding of malice or corporate responsibility for malice. Ford also seeks reversal of the punitive award for claimed instructional errors on malice and proof of malice as well as on the numerous grounds addressed to the judgment as a whole. Finally, Ford maintains that even if punitive damages were appropriate in this case, the amount of the award was so excessive as to require a new trial or further remittitur of the award.

In the ensuing analysis (ad nauseam) of Ford's wide-ranging assault on the judgment, we have concluded that Ford has failed to demonstrate that any errors or irregularities occurred during the trial[,] which resulted in a miscarriage of justice requiring reversal.

(1) "*Malice*" Under Civil Code Section 3294:

The concept of punitive damages is rooted in the English common law and is a settled principle of the common law of this country. The doctrine was a part of the common law of this state long before the Civil Code was adopted. When our laws were codified in 1872, the doctrine was incorporated in Civil Code section 3294, which at the time of trial read: "In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example.

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Ford argues that "malice" as used in section 3294 and as interpreted by our Supreme Court in *Davis v. Hearst* (1911) 160 Cal. 143 [116 P. 530], requires *animus malus* or evil motive—an intention to injure the person harmed—and that the term is therefore conceptually incompatible with an unintentional tort such as the manufacture and marketing of a defectively designed product. This contention runs counter to our decisional law. As this court recently noted, numerous California cases after *Davis v. Hearst, supra.*, have interpreted the term "malice" as used in section 3294 to include, not only a malicious intention to injure the specific person

harmed, but conduct evincing "a conscious disregard of the probability that the actor's conduct will result in injury to others."

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In *Taylor v. Superior Court*, our high court's most recent pronouncement on the subject of punitive damages, the court observed that the availability of punitive damages has not been limited to cases in which there is an actual intent to harm plaintiff or others. . . . "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences."

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(3) *Sufficiency of the Evidence to Support the Finding of Malice and Corporate Responsibility:*

Ford contends that its motion for judgment notwithstanding the verdict should have been granted because the evidence was insufficient to support a finding of malice or corporate responsibility for such malice. The record fails to support the contention.

"The rules circumscribing the power of a trial judge to grant a motion for judgment notwithstanding the verdict are well established. The power to grant such a motion is identical to the power to grant a directed verdict; the judge cannot weigh the evidence or assess the credibility of witnesses; if the evidence is conflicting or if several reasonable inferences may be drawn, the motion should be denied; the motion may be granted "only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence to support the verdict." There was ample evidence to support a finding of malice and Ford's responsibility for malice.

Through the results of the crash tests Ford knew that the Pinto's fuel tank and rear structure would expose consumers to serious injury or death in a 20-to 30-mile-per-hour collision. There was evidence that Ford could have corrected the hazardous design defects at minimal cost but decided to defer correction of the shortcomings by engaging in a cost-benefit analysis balancing human lives and limbs against corporate profits. Ford's institutional mentality was shown to be one of callous indifference to public safety. There was substantial evidence that Ford's conduct constituted "conscious disregard" of the probability of injury to members of the consuming public.

Ford's argument that there can be no liability for punitive damages because there was no evidence of corporate ratification of malicious misconduct is equally without merit. California follows the Restatement rule that punitive damages can be awarded against a principal because of an action of an agent if, but only if, "(a) the

principal authorized the doing and the manner of the act, or (b) the agent was unfit and the principal was reckless in employing him, or (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or (d) the principal or a managerial agent of the principal ratified or approved the act.' The present case comes within one or both of the categories described in subdivisions (c) and (d)."

There is substantial evidence that management was aware of the crash tests showing the vulnerability of the Pinto's fuel tank to rupture at low speed rear impacts with consequent significant risk of injury or death of the occupants by fire. There was testimony from several sources that the test results were forwarded up the chain of command; vice president Robert Alexander admitted to Mr. Copp that he was aware of the test results; vice president Harold MacDonald, who chaired the product review meetings, was present at one of those meetings at which a report on the crash tests was considered and a decision was made to defer corrective action; and it may be inferred that Mr. Alexander, a regular attendee of the product review meetings, was also present at that meeting. McDonald and Alexander were manifestly managerial employees possessing the discretion to make "decisions that will ultimately determine corporate policy." There was also evidence that Harold Johnson, an assistant chief engineer of research, and Mr. Max Jurosek, chief chassis engineer, were aware of the results of the crash tests and the defects in the Pinto's fuel tank system. Ford contends those two individuals did not occupy managerial positions because Mr. Copp testified that they admitted awareness of the defects but told him they were powerless to change the rear-end design of the Pinto. It may be inferred from the testimony, however, that the two engineers had approached management about redesigning the Pinto or that, being aware of management's attitude, they decided to do nothing. In either case the decision not to take corrective action was made by persons exercising managerial authority. Whether an employee acts in a "managerial capacity" does not necessarily depend on his "level" in the corporate hierarchy. As the *Egan* court said: "Defendant should not be allowed to insulate itself from liability by giving an employee a non[-]managerial title and relegating to him crucial policy decisions."

While much of the evidence was necessarily circumstantial, there was substantial evidence from which the jury could reasonably find that Ford's management decided to proceed with the production of the Pinto with knowledge of test results revealing design defects which rendered the fuel tank extremely vulnerable on rear impact at low speeds and endangered the safety and lives of the occupants. Such conduct constitutes corporate malice.

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(6) Amount of Punitive Damage Award:

Ford's final contention is that the amount of punitive damages awarded, even as reduced by the trial court, was so excessive that a new trial on that issue must be granted. Ford argues that its conduct was less reprehensible than those for which

punitive damages have been awarded in California in the past; that the \$3 1/2 million award is many times over the highest award for such damages ever upheld in California; and that the award exceeds maximum civil penalties that may be enforced under federal or state statutes against a manufacturer for marketing a defective automobile. We are unpersuaded.

In determining whether an award of punitive damages is excessive, comparison of the amount awarded with other awards in other cases is not a valid consideration. Nor does "[t]he fact that an award may set a precedent by its size" in and of itself render it suspect; whether the award was excessive must be assessed by examining the circumstances of the particular case. In deciding whether an award is excessive as a matter of law or was so grossly disproportionate as to raise the presumption that it was the product of passion or prejudice, the following factors should be weighed: The degree of reprehensibility of defendant's conduct, the wealth of the defendant, the amount of compensatory damages, and an amount which would serve as a deterrent effect on like conduct by defendant and others who may be so inclined. Applying the foregoing criteria to the instant case, the punitive damage award as reduced by the trial court was well within reason.

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In assessing the propriety of a punitive damage award, as in assessing the propriety of any other judicial ruling based upon factual determinations, the evidence must be viewed in the light most favorable to the judgment. Viewing the record thusly in the instant case, the conduct of Ford's management was reprehensible in the extreme. It exhibited a conscious and callous disregard of public safety in order to maximize corporate profits. Ford's self-evaluation of its conduct is based on a review of the evidence most favorable to it instead of on the basis of the evidence most favorable to the judgment. Unlike malicious conduct directed toward a single specific individual, Ford's tortious conduct endangered the lives of thousands of Pinto purchasers. Weighed against the factor of reprehensibility, the punitive damage award as reduced by the trial judge was not excessive.

Nor was the reduced award excessive taking into account defendant's wealth and the size of the compensatory award. Ford's net worth was \$7.7 billion and its income after taxes for 1976 was over \$983 million. The punitive award was approximately .005 percent of Ford's net worth and approximately .03 percent of its 1976 net income. The ratio of the punitive damages to compensatory damages was approximately 1.4 to 1. Significantly, Ford does not quarrel with the amount of the compensatory award to Grimshaw.

Nor was the size of the award excessive in light of its deterrent purpose. An award which is so small that it can be simply written off as a part of the cost of doing business would have no deterrent effect. An award which affects the company's pricing of its product and thereby affects its competitive advantage would serve as a

deterrent. The award in question was far from excessive as a deterrent against future wrongful conduct by Ford and others.

Ford complains that the punitive award is far greater than the maximum penalty that may be imposed under California or federal law prohibiting the sale of defective automobiles or other products. For example, Ford notes that California statutes provide a maximum fine of only \$50 for the first offense and \$100 for a second offense for a dealer who sells an automobile that fails to conform to federal safety laws or is not equipped with required lights or brakes; that a manufacturer who sells brake fluid in this state failing to meet statutory standards is subject to a maximum of only \$50; and that the maximum penalty that may be imposed under federal law for violation of automobile safety standards is \$1,000 per vehicle up to a maximum of \$800,000 for any related series of offenses (15 U.S.C. §§ 1397-1398). It is precisely because monetary penalties under government regulations prescribing business standards or the criminal law are so inadequate and ineffective as deterrents against a manufacturer and distributor of mass-produced defective products that punitive damages must be of sufficient amount to discourage such practices. Instead of showing that the punitive damage award was excessive, the comparison between the award and the maximum penalties under state and federal statutes and regulations governing automotive safety demonstrates the propriety of the amount of punitive damages awarded.

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