

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

<p>TOBY THORNTON, Plaintiff, v. AMERICAN INTERSTATE INSURANCE COMPANY, Defendant.</p>	<p>Case No.: CVCV 110614 ORDER ON DEFENDANT’S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR NEW TRIAL OR REMITTUR</p>
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This matter was brought before the Court on Defendant American Interstate Insurance Company’s (“AIIC” or “Defendant”) Motion for Judgment Notwithstanding the Verdict or Alternatively for New Trial or Remittitur (hereinafter “the Motion”) filed 25 March 2015. Hearing was held on 13 April 2015 with all parties appearing by their current attorneys of record. The Court, being fully advised by the arguments and briefs of the parties, finds the following:

I. BACKGROUND FACTS AND PROCEEDINGS

The Court incorporates by reference its fact-finding statement from its Order granting partial summary judgment to Toby Thornton (“Plaintiff”). (*See* Order on Motion for Partial Summary Judgment, 1/12/2015). Evidence adduced at trial will be discussed below where appropriate. Following that order, and an interlocutory appeal, the matter proceeded to jury trial on the issues of bad faith prior to 11 March 2013 and damages.

The jury found for Plaintiff and awarded \$284,000 in compensatory damages and \$25 million in punitive damages. AIIC asserts that it is entitled to judgment notwithstanding the jury’s verdict because this Court erred in denying AIIC’s motion for a directed verdict on

Plaintiff's bad faith claim. AIIC alternatively requests a new trial, citing legal error in the jury instructions with respect to bad faith, as well as insufficient evidence to instruct the jury on Plaintiff's requests for damages due to pain and suffering and loss of equity. Finally, AIIC requests remittitur of the jury's punitive damages award, arguing it amounts to an arbitrary deprivation of property in violation of both the Federal and Iowa constitutions. AIIC's motions will be denied.

II. RULING OF THE COURT

a. Defendant's Motion for Judgment Notwithstanding the Verdict.

AIIC argues that it was entitled to a directed verdict on Plaintiff's bad faith claim—AIIC moved for a directed verdict at the close of its evidence and again at the close of all evidence. The Court found, pre-trial, that AIIC had acted in bad faith as a matter of law beginning on 11 March 2013. At issue for trial with respect to bad faith was AIIC's conduct prior to that date. AIIC's only contention is that the Court applied the wrong legal standard.

In support of its motion, AIIC argues there is no evidence in the record of any bad faith because it never denied Plaintiff's claim. AIIC argues instead that, because it never missed a payment during the period in which it resisted Plaintiff's disability claim without cause, it cannot have acted in bad faith. This is the same argument Defendant pursued at the summary judgment stage, one that has already been rejected. Essentially, AIIC asserts that the only conduct that can trigger bad faith liability is a literal denial or delay of payments. However, AIIC cannot purchase immunity from its egregious conduct in that way. Its reliance on *Brown* is inapt: as discussed in the prior order, that case held that a bad faith action accrued upon notice, not that bad faith required a literal refusal of payments. *See Brown v. Liberty Mutual Ins. Co.*, 513, N.W.2d 762 (Iowa 1994). To allow a tortfeasor to

immunize itself against its misconduct by writing a check even while denying the recipient's entitlement to those funds would undermine the entire theory behind the bad faith tort.

To reiterate, AIIC does not claim, nor would it be taken seriously if it did, that if it had somehow succeeded in its meritless defense it would have continued to pay its estimation of Plaintiff's statutory benefits. AIIC maintained an adversarial posture as long as it was procedurally able, long after it had internally acknowledged that Plaintiff was permanently and totally disabled—in other words, long after the claim was “fairly debatable” as required to avoid bad faith liability—in hope of a settlement that was less than what AIIC knew Plaintiff was statutorily entitled to. *See id.* The mere existence of a right to challenge a petition for benefits does not create a fair debate as to the claimant's entitlement. The payment of benefits was irrelevant to the bad faith denial in this case.

AIIC's motion for judgment notwithstanding that verdict will be denied.

b. Defendant's motion for a new trial.

AIIC asserts that it is entitled to a new trial because of legal error found in the jury instructions under IOWA R. CIV. P. § 1.1004(8).¹ A verdict that does not effectuate substantial justice may be set aside by the trial court, and a new trial granted. *See Ferguson-Diehl Constr. Co. v. Langloss*, 30 N.W.2d 320 (Iowa 1948); *Houvenagle v. Wright*, 340 N.W.2d 783 (Iowa 1983). The court's discretion to do so may only be exercised for sound judicial reasons and must not be exercised arbitrarily. *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 144 (Iowa 1996) (citing *Jacobsen v. Gamber*, 86 N.W.2d 147, 149 (Iowa 1957)); *Langloss*, 30 N.W.2d at 324 (Iowa 1948); *Riley v. Wilson Concrete Co.*, 184 N.W.2d 689, 690 (Iowa

¹ AIIC also asserts that the punitive damages verdict was induced by passion or prejudice under IOWA R. CIV. P. § 1.1004(4) such that a new trial is warranted. That claim is dealt with in the next section discussing the excessiveness of damages and remittitur.

1971). A court may not set aside a jury verdict through caprice or whim; nor may it reweigh the evidence. *Wilson*, 558 N.W.2d at 144. The court is “obligated to view the evidence in the light most favorable to the jury verdict.” *Id.* (citing *Hall v. Montgomery Ward & Co.*, 252 N.W.2d 421, 422 (Iowa 1977)).

AIIC asserts several grounds in its motion for a new trial, renumbered here as: (i) that the Court’s ruling on bad faith liability was legal error, and; (ii) the jury was given several erroneous instructions.

i. The Court’s bad faith summary judgment order.

AIIC argues that the portion of the Court’s summary judgment order finding bad faith in AIIC’s denial and delay of the commutation of Plaintiff’s disability benefits amounted to legal error sufficient to warrant a new trial. In the time since that order was issued, AIIC has changed its counsel but not its legal argument on this issue. The Court stands by its original summary judgment order, and thus finds no reason to grant a new trial on this ground.

However, one aspect of AIIC’s motion invites clarification. Defendant correctly points out that the decision on whether a commutation of worker’s compensation benefits is in a claimant’s best interests must be made by the industrial commissioner. *See IOWA CODE* § 85.45(1)(b). But AIIC mischaracterizes the Court’s finding of bad faith as resting on AIIC’s decision to require the industrial commissioner to perform this statutory duty. There was no decision there; AIIC had no choice.

Instead, AIIC was held to have committed bad faith in the way it conducted itself prior, during, and after the commutation hearing, irrespective of the commissioner’s performance. AIIC internally conceded that Plaintiff was entitled to a commutation, but determined to block it. AIIC chose not to submit a stipulated commutation to the industrial

commissioner. AIIC did not have to hold out Plaintiff's purchase of a headstone for his recently deceased mother as evidence of financial irresponsibility, nor likewise characterize his children as vices apt to drain his funds unnecessarily. The legal requirement of the deputy commissioner's approval did not create a duty in AIIC to oppose the partial commutation motion. The only duty AIIC was under was a duty to conduct itself in good faith with respect to Plaintiff's case, including in the way the case for commutation of benefits was presented to the commissioner for approval. (*See* Order on Motion for Partial Summary Judgment, 1/12/2015, for a full discussion). AIIC breached that duty.

Defendant's motion for a new trial on this ground will be denied.

ii. The jury instructions on bad faith, pain and suffering, and loss of equity.

AIIC also asserts that the Court erred in overruling its objections to certain instructions. Specifically, AIIC first asserts the jury should not have been instructed on bad faith at all, nor on the Court's prior bad faith finding without an instruction to consider payments made by Defendant to Plaintiff in connection with the claim. Next, AIIC contends that the record lacked sufficient evidence to submit the Plaintiff's request for pain and suffering damages to the jury. Likewise, AIIC asserts that the record lacked sufficient evidence to submit Plaintiff's loss of equity damages request to the jury.

1. BAD FAITH JURY INSTRUCTIONS

A trial court has no discretion to deny a motion for new trial on this basis if the jury was improperly instructed on the applicable legal standard. *See Benn v. Thomas*, 512 N.W.2d 537 (Iowa 1994). AIIC's assertion of jury instruction error with respect to Instruction 18 (discussing the standard for bad faith) is a rehash of its objections to the

Court's summary judgment finding on bad faith generally, addressed above. The instruction was proper.

AIIC also objects to the phrase "refusal to pay" in Instruction 19, as Plaintiff received his benefits payments. Instruction 19 instructed the jury that there had been a judicial finding of bad faith from 11 March 2013 forward and that it must abide by that finding. Although the instruction used the phrase "refusal to pay," the trial provided the context for the correct interpretation. Plaintiff presented to the jury its theory that AIIC's refusal to acknowledge Plaintiff's status as permanently and totally disabled and resistance to Plaintiff's partial commutation, forcing litigation to leverage a reduction in benefits to be paid, despite knowing it had no reasonable basis for doing so, caused damages unrelated to money paid out by AIIC to Plaintiff. In fact, both parties made it clear during the trial that AIIC had paid all the weekly benefits that had accrued; it was discussed in opening statements, adduced repeatedly as testimony, and revisited during closing. In addition to benefits paid, the jury also heard that AIIC had timely paid for a converted van, provided maintenance, and paid for a wheelchair-friendly remodel of Plaintiff's in-laws' home. The jury also heard several of AIIC's witnesses express their disagreement with the bad faith ruling based in part on the fact of payments made.

Instructions 16–27 cover the breadth of the jury's obligations with respect to bad faith fact-finding. The instructions then move on to damages. The capstone is Instruction 27, which states:

Plaintiff has filed a Petition that he is entitled to damages because of Defendant's *unreasonable refusal to acknowledge* Plaintiff total disability and entitlement to a commutation of future benefits. Defendant responds *Plaintiff was paid all benefits to which he was entitled* under the Iowa Worker's Compensation Act.

(Emphasis added). Included in the jury's instructions on the standard for bad faith fact-finding was this in Instruction 18: "It is possible for an insurer to make some payments while denying the full policy benefits." By these instructions, the jury was advised of the legal standard, the Plaintiff's theory of liability, and the fact of AIIC's having paid.

Moreover, the Court in its summary judgment ruling indicated that benefits paid were not evidence of denial, but could be used to discuss damages. In this case, however, Plaintiff was not seeking any arrears from AIIC. Thus, as a matter of jury instruction, the amount of benefits paid to Plaintiff in this case was not relevant to any issue the jury was to decide. Indeed, a glance at the instructions regarding recoverable damages and the jury's verdict reveals that it awarded no damages duplicative of unpaid benefits. (*See* Instruction 28; Jury Verdict, 2/11/2015). The jury was properly instructed on bad faith.

2. DAMAGES INSTRUCTIONS

With respect to the damages instructions in Instruction 28, AIIC asserts that the record did not support the submission of past pain and suffering or loss of equity damages and that the jury's figures were unreasonable. However, the record reveals that the jury heard evidence of both pain and suffering and loss of equity sufficient to instruct the jury and support the amounts awarded.

Taken in the light most favorable to the verdict, the evidence revealed Plaintiff suffered physical pain and illness from recurrent infections in his elbows and forearms, eventually requiring hospitalization. The evidence showed the infections (bursitis, and later cellulitis) likely came as a result of the narrow, hard-surfaced armrests on the original wheelchair. Repeated attempts were made to repair the original wheelchair, including

replacing and padding the armrests, without success. After a months-long delay following a request and prescription by Plaintiff's insurer-appointed physician, Plaintiff's wheelchair was eventually replaced with a newer version with wider, padded armrests.

The evidence also showed that Plaintiff had been pre-approved for a mortgage loan on a home, contingent upon a court-approved settlement sufficient to make the required down payment. It also showed a ranch home suitable for disability-friendly conversion in Monona had come and gone from the real estate market during the time in which Plaintiff was awaiting his lump sum, a portion of which was earmarked as a down payment fund. The record showed that most homes in Plaintiff's vicinity were split-level and multi-story homes and that single-story homes were rare to be found and even rarer to be found on the market. Since the partial commutation payout, another property suitable for wheelchair conversion has not come on the market in Monona or surrounding towns.

AIIC also objects to the jury's calculation of loss of equity damages as unsupported by the record. Specifically, AIIC argues that the jury's damages calculation came from multiplying the putative mortgage figure of \$750 per month by three years, leading to the \$27,000 equity loss awarded. AIIC asserts that figure fails to account for the hit to equity incurred by applying part of a mortgage payment to interest. While a jury may not speculate as to whether damages have been sustained, "recovery will not be denied merely because the amount of damages is difficult to ascertain." *Robinson v. Perpetual Servs. Corp.*, 412 N.W.2d 562, 567 (Iowa 1987) (citing *Palmer v. Albert*, 310 N.W.2d 169, 174 (Iowa 1981)). Where there is "a reasonable basis in the record from which the amount of damages can be inferred, recovery will be allowed." *Robinson*, 412 N.W.2d at 567. In this case, Plaintiff's expert offered his estimate of a mortgage payment similar to Plaintiff's current rent payment,

based on Plaintiff's purchase budget, and used that as a basis to calculate a representative gain in home equity. The record shows a reasonable basis for the jury's award calculation.

In sum, the Court finds that there existed sufficient evidence to: submit the questions of pain and suffering and loss of equity damages to the jury; find the jury's damages calculation is reasonable, and; find the jury was properly instructed on the legal standard. Finding no errors of law or fact, substantial justice would not be effectuated by the grant of a new trial on these grounds, and thus the motion will be denied.

c. Defendant's motion for remittitur.

AIRC asserts that the jury's punitive damages award of \$25 million is so large as to violate its constitutional rights to due process under the United States and Iowa constitutions. It argues the award is arbitrary and thus influenced by passion or prejudice, worthy of a new trial under IOWA R. CIV. P. § 1.1004(4) and remittitur under § 1.1010.

i. Excessive punitive damages under federal law.

Punitive damages are a legitimate tool for punishment and deterrence of unlawful conduct. *See BMW of North America v. Gore*, 517 U.S. 559, 568 (1996). However, such damages must not be excessive, because "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice . . . of the severity of the penalty that a State may impose." *See id.* at 574. "Grossly excessive" or otherwise arbitrary awards lie beyond such constitutional boundaries. *See State Farm Mutual Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003).

To determine where those boundaries lie, the Supreme Court has laid out three "guideposts" to use when evaluating a punitive damages award for excessiveness: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual

harm suffered and the amount of punitive damages awarded, and; (3) the difference between the punitive damages actually awarded and any civil penalties authorized or imposed in similar cases. *See id.*

1. REPREHENSIBILITY

Reprehensibility is “perhaps the most important indicium of the reasonableness of a punitive damages award.” *See Gore*, 517 U.S. at 575. This is because a punitive damages award “should reflect the enormity of the offense.” *See id.* (quoting *Day v. Woodworth*, 13 How. 363, 371 (1852)). Determining the degree of reprehensibility of conduct helps the factfinder to assess the amount of deterrence or punishment warranted. *See Wolf v. Wolf*, 690 N.W.2d 887, 894–95 (Iowa 2005).

This guidepost is further broken down into five separate factors that courts must examine when assessing reprehensibility: whether harm suffered is physical versus merely economic; indifference towards or reckless disregard of health or safety; the financial vulnerability of the target; whether the conduct involved repeated actions rather than an isolated incident; and, whether the harm suffered resulted from malice, trickery or deceit. *See Campbell*, 538 U.S. at 419. The presence of any one factor in a plaintiff’s favor may not be sufficient to sustain a punitive damages award, but the absence of all renders the award suspect. *See Wolf*, 690 N.W.2d at 894. In this case, all five are present.

With respect to physical versus economic harm, the record taken in the light most favorable to the verdict reveals that Plaintiff suffered physical harm, as analyzed above. *See supra* § II.b.2.i. This is in addition to the economic harm suffered during AIIC’s meritless defense of the permanent total disability finding, as well as the defense and delay of the partial commutation finding.

The next factor is indifference towards or reckless disregard of Plaintiff's health or safety. The record reveals AIIC followed a pattern of waiting to acknowledge the obvious until forced. Despite internally acknowledging Plaintiff's entitlement to statutory permanent total disability, AIIC fought against that finding. Likewise, AIIC forced a contested hearing on whether a partial commutation would be in Plaintiff's best interests despite internally acknowledging that such would be the case. That pattern continued when Plaintiff required a new wheelchair: his case manager, aware of Plaintiff's need, decided to sit on that knowledge and wait for a formal request, despite having authority to order the needed wheelchair herself. Plaintiff suffered an infection in his forearms that required hospitalization, which Plaintiff's physician testified was likely the result of defects in Plaintiff's prior wheelchair. AIIC's conduct showed a pattern of indifference to any factor beyond its own bottom line, including Plaintiff's well-being and statutory entitlements.

Next, the analysis with respect to financial vulnerability dovetails with AIIC's argument that it never denied Plaintiff's claim because it paid him what it estimated to be his benefit entitlement. Plaintiff is a quadriplegic whose prospects for ever again being capable of work are close to nil; indeed, his own physician would not release him to work even as Plaintiff expressed interest in doing so. That gives rise to two facts which demonstrate his financial vulnerability. First, Plaintiff will forever be dependent on his disability benefits, of which his monthly worker's compensation award comprised two-thirds. Second, those two-thirds, when delivered in monthly installments, are a fixed sum that is indifferent to cost of living inflation. Thus, over time, his monthly benefit award would inevitably dip below his cost of living. That is why he sought the partial commutation, because a lump sum is an investable nest egg that at least has a chance of outpacing inflation. Plaintiff could not

survive without his worker's compensation benefits, and thus was vulnerable. In its motion, AIIC asserts that Plaintiff was never financially vulnerable because it paid his benefits even as it challenged his entitlement to them. The circularity in this argument is apparent. In reality, without a finding of statutory entitlement, Plaintiff's financial well-being rested on AIIC's dubious largesse continuing. Thus, not only was Plaintiff financially vulnerable, AIIC's bad faith denial of his benefits in large part caused that vulnerability, a fact of which it was aware when it entered into settlement negotiations with Plaintiff. AIIC's attempt to leverage the financial vulnerability that it by forcing a settlement less than that to which it knew Plaintiff was entitled was an egregious breach of its duty to conduct itself in good faith, a fact examined in more detail in the discussion of proportionality below.

The next factor to be weighed is whether the conduct was repeated versus isolated. In this case, AIIC followed a pattern of denial and delay, first with Plaintiff's entitlement to permanent total disability status and later with his fitness for a partial commutation of benefits. These actions constituted a years-long course of conduct that cannot properly be considered an isolated incident.²

The final factor is to determine whether the bad faith conduct involved malice, trickery, or deceit. In this case, there are judicial and jury findings of intentional misconduct on Defendant's part. The record reveals that AIIC focused its efforts with respect to Plaintiff's disability status, not towards ensuring that he ultimately received the benefits to which he was entitled, but towards maintaining the best possible defense of the action for as

² It should be noted that Plaintiff asserts this course of conduct continued even beyond the underlying worker's compensation dispute and into AIIC's defense of the instant case, notably by its actions in discovery, but that accusation is too far. Defendant's counsel is under a professional and ethical obligation to defend its client, and the record contains no evidence of misconduct on the part of Defendant's trial counsel in doing so. Plaintiff's accusation thus plays no part in the Court's excessiveness analysis.

long as possible in the hope of settling for less than what its statutory exposure would be, if awarded. AIIC's claims representatives acknowledged Plaintiff's status as permanently and totally disabled almost immediately in their case files. AIIC eventually changed its designation of Plaintiff from permanent partial disability to permanent total disability in its representations to the deputy industrial commissioner, but did not advise Plaintiff of that change. AIIC's counsel, as a matter of strategy, received oral reports from two different physicians (both appointed by Defendant) stating that Plaintiff was permanently and totally disabled, but did not request written reports so as to prevent that information from being discoverable. Likewise with Phil Davis, the vocational specialist, who was asked to go no further than speculating in his report that, were a vocational evaluation to be made, a fit might be found. He was not asked to do an actual labor survey indicating whether such minimal work as Plaintiff may theoretically capable of performing was actually available because it was feared none would be found, and that lack of availability would then be discoverable. It is clear from the record that Plaintiff handled the underlying case deceptively as it maneuvered for a settlement.

Accordingly, the Court's reprehensibility analysis reveals that every factor under the reprehensibility guidepost is present to some degree, and some are present to a large degree. (*See also* Order on Motion for Partial Summary Judgment, 1/12/2015). Defendant's conduct was reprehensible.

2. PROPORTIONALITY

The relationship between the plaintiff's harm suffered and the punitive damages imposed must be a reasonable one. *See Gore*, 517 U.S. at 581. The reasonableness of that relationship is determined by examining the ratio between punitive and compensatory

damages. *See id.* *See also TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993); *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991). There is no bright line ratio, but the Supreme Court has suggested ratios of 4:1 or 1:1 when compensatory damages are “substantial.” *See Campbell*, 538 U.S. at 426 (finding “substantial” compensation where jury awarded \$1 million in damages for plaintiff’s one-and-a-half years of pure economic harm). There are a number of aggravating factors that impact the ratio analysis, including damages awards that do not adequately capture the plaintiff’s harm (such as nominal damages, hard-to-find damages, or potential harm), resulting from egregious behavior deserving of deterrence. *See, e.g., TXO*, 509 U.S. 443 (1993); *Wolf*, 690 N.W.2d at 894.

In this case, the ratio of punitive to compensatory damages is 88:1. This is well above the suggested (but not mandated) ratios, but well below the 500:1 ratio described as “breathtaking” and deserving of a “suspicious judicial eyebrow.” *See Gore*, 517 U.S. at 583 (quoting *TXO*, 509 U.S. at 481). Note, however, that even an award of 500:1 may stand under this guidepost where conduct is sufficiently egregious. *See Wilson*, 558 N.W.2d at 144. A review of the facts indicates that this ratio is reasonable because Defendant’s behavior was egregious.

Many of the facts presented to the jury demonstrating egregious misconduct have already been discussed in other contexts here: the knowingly meritless resistance and defense, used against a financially vulnerable claimant, made vulnerable by the very fact of AIIC’s refusal to admit his eligibility, in the hopes of forcing a settlement for less than the full statutory entitlement. The egregiousness of AIIC’s misconduct is obvious when the evidence presented to the jury is recited in narrative form:

Plaintiff became permanently paralyzed while driving a truck on 25 June 2009. His employer's worker's compensation insurance carrier, AIIC, became aware of the injury immediately and aware of its severity within the month. Both the original claims adjuster and treating physician acknowledged in their notes that the injury was so severe that Plaintiff was permanently and totally disabled. Worker's compensation insurers evaluate injuries at Maximum Medical Improvement ("MMI"), meaning the point at which the injury will no longer improve, when assessing benefits eligibility. Some injuries are so severe that MMI is apparent from the diagnosis itself, as was the case with this injury according to the original claims adjuster. In fact, Plaintiff was categorized in a later defense medical examination as 90% impaired (100% impairment happens at death), the severity of which the claims adjuster admitted she had never seen before.

Plaintiff was ultimately and finally diagnosed as quadriplegic on 11 September 2009. Given AIIC's own internal assessments of Plaintiff's injury, it was around this time that any reason to make the claim "fairly debatable" evaporated. AIIC did initiate settlement discussions at that time, offering a lump sum payout contingent on a "closed file" settlement. Such a settlement would have put money on Plaintiff's behalf into Medicare and non-Medical medical set-aside accounts. Costs relevant to the former, having depleted the account, would then be taken over by Medicare. Costs relevant to the latter, having done the same, would be Plaintiff's responsibility. In other words, such a settlement would end for all time AIIC's responsibilities with respect to Plaintiff's claim. Any excess in the set-aside accounts upon Plaintiff's death would revert to Defendant.

However, persons who are permanently and totally disabled by compensable work-related injuries are entitled to have all medical care paid by their employer's worker's

compensation insurer, as well as statutorily-calculated benefits. Additionally, persons found to be permanently totally disabled are entitled to permanent benefits, versus a maximum of 500 weeks for those who are only partially disabled. In addition to medical expenses, Plaintiff's full statutory benefit indemnity was calculated at around \$760,000 in present-day value. AIIC, internally believing Plaintiff was permanently and totally disabled, should have negotiated the settlement on that basis.

Instead, AIIC resisted all attempts at any settlement through negotiations and mediation that left it responsible for medical payments and offered indemnity payouts as low as \$600,000 on a cash/annuity basis. AIIC's representatives conceded that, from the date they learned of Plaintiff's injury until the present, they never learned of any reason to debate Plaintiff's permanent total disability status. AIIC debated it to try and force a settlement at less than the full statutory amount. Indeed, its prior counsel had repeatedly indicated to Plaintiff that the defense was likely to drag on for years unless a settlement was reached. The deputy commissioner found no merit whatsoever in AIIC's denial, and a subsequent reconsideration on the matter of whether vocational services had been offered did not change that. While AIIC claimed that the medical records indicated there might be some chance of vocational rehabilitation, no investigation on the matter was ever done until litigation was near, admittedly because AIIC knew what it would find. It is telling that AIIC considered the matter self-evident until pressed for a reason to mount a defense it called "desperate." (*See* Transcript, 406:22–407:6).

The narrative is similar with respect to Plaintiff's request for a partial commutation of the benefits award into a lump sum. Despite having offered Plaintiff a lump sum payout based on a budget it admitted was reasonable, AIIC then resisted Plaintiff's request for the

partial commutation payout as not in his best interests. Among AIIC's reasons for resisting the partial commutation were that Plaintiff was so devoted to his children that they were akin to a vice likely to drain his nest egg, and that his having spent a \$3,000 inheritance from his mother's estate on her headstone and a television was evidence of his irresponsibility with lump sums. The deputy commissioner summarized AIIC's case by saying: "[t]he arguments of the defendants are weak at best and appear mostly designed to delay the inevitable commutation of benefits." (See Plaintiff's Exh. 83, p. 5). Though AIIC asserts it was reasonable to investigate whether a lump sum payout was in Plaintiff's best interests, it is telling that, after taking the reasonableness of a lump sum payout for granted when offering a settlement, AIIC resisted the idea in litigation, using frivolous defenses while doing so.

Not long after the partial commutation award, Plaintiff's physician wrote a prescription for a new wheelchair. As discussed above, the prior wheelchair, which AIIC knew would need replacing and knew had been in need of repairs more than once, had been identified as the likely cause of Plaintiff's recurrent elbow injuries. AIIC knew of the wheelchair order within two weeks, though as many as five months passed before the wheelchair was delivered. During that period, Plaintiff was hospitalized for an infection his physician believed to be caused by the dilapidated wheelchair. Though AIIC admitted it could have followed up sooner, it sat on the prescription until the vendor finally called to move the process forward. In isolation, this event could be bureaucratic error. As a pattern, it appears to be another example of AIIC's waiting to perform its duties until forced to do so by order or circumstance.

Taken in total, the Court finds AIIC's conduct to have been so egregious as to support the punitive damages award ratio here. *Accord TXO*, 509 U.S. 443 (upholding punitive

damages award where defendant acted in bad faith by forcing frivolous litigation in order to increase profits); *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008) (“Action taken or omitted in order to augment profit represents an enhanced degree of punishable culpability . . .”).

Additionally, the Court finds that Plaintiff’s damages do not encompass all of the “potential harm” present in this case. *See TXO*, 509 U.S. at 444. AIIC described its activities in Iowa as that of a high-risk worker’s compensation insurer, including truckers and cell phone tower workers. Like the defendant in *TXO*, a corporation whose “pattern of behavior could potentially cause millions of dollars in damages to other victims,” AIIC likewise has engaged in a troubling pattern of behavior involving trickery and deceit in pursuit of financial gain. *See id.* at 460–61 (internal quotation marks omitted). Given the jury heard AIIC refer to its conduct as mere negotiating tactics and as well as its repeated disagreement with the Court’s bad faith findings, combined with AIIC’s high-risk insurance activities in Iowa, the jury here would have been reasonable in presuming that the damages for which it compensated Plaintiff did not capture all of the potential harm. *See id.*; *See also Haslip*, 499 U.S. at 18.

Based on the above analysis, the 88:1 ratio between punitive and compensatory damages is reasonable.

3. COMPARABILITY

Punitive damages must be similar to comparable sanctions for similar conduct in order to ensure that “substantial deference” to legislative judgments is accorded, and to assure that defendants are not penalized to an extent beyond which they had no notice. *See Gore*, 517 U.S. at 583. Comparable sanctions may include statutory penalties for similar

conduct or punitive damages awarded in similar circumstances. *See id.*; *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, 758 F.3d 1051, 1061 (8th Cir. 2014).

In this case, AIIC urges that the proper comparable for its behavior is that found for a violation of IOWA CODE § 86.13(4), a worker's compensation hearing provision which provides for a penalty of up to 50% of the denied benefit amount. This is substantially similar to the argument raised by Defendant during the summary judgment phase, in which AIIC asserted that because it had not been found in violation of that statute in the underlying worker's compensation proceeding, it could not have committed bad faith. As the Court indicated at that time, the conduct captured by that statute is different from conduct sufficient to trigger civil bad faith liability. *See Boylan v. Am. Motorists Ins. Co.*, 489 N.W.2d 742, 742–44 (Iowa 1992) (finding that the statutory action applies only to delays in commencement or to termination of benefits and contemplates only negligent action as compared with the bad faith tort). Because intent is of paramount concern in the determination of bad faith, the worker's compensation penalty provision is not comparable. (*See Order on Motion for Partial Summary Judgment*, 1/12/2015).

There are punitive damages award in similar contexts, however. In *Condon v. Crick*, 604 N.W.2d 587 (Iowa 1999), the defendant was liable for a bad faith breach of contract in converting money meant for his employer to his own use, and the court affirmed an award where the ratio of punitive to compensatory damages was 43:1. In *Spaur v. Owens-Corning Fiberglass Corp.*, 510 N.W.2d 854 (Iowa 1994), an asbestos case, the court affirmed a punitive damages award of \$1.5 million for compensatory damages totaling just over \$1.4 million. In *Wilson v. IBP, Inc.*, 558 N.W.2d 132 (Iowa 1996), a similar case, the defendant insurer was liable for bad faith denial of benefits where it engaged in a pattern of denying

and obfuscating the extent of its insured's injuries in order to save on costs, and the court directed a verdict of \$2 million in punitive damages against \$4,000 in compensatory damages, a 500:1 ratio. There is also the aforementioned *TXO*, approving of a punitive damages award of 526:1. 509 U.S. at 461–62.

Based on the above analysis, the Court finds that the punitive damages awarded by the jury in this case is within the range found in comparable cases.

Thus, the punitive damages awarded here are not so excessive as to violate Defendant's federal constitutional due process rights. AIIC's motion on this ground will be denied.

ii. Excessive punitive damages under Iowa law.

In Iowa, punitive damages are permitted where a preponderance of clear, convincing and satisfactory evidence shows “willful and wanton disregard for the rights or safety of another.” IOWA CODE § 668A.1(1)(a). For the purposes of § 668A, “willful and wanton” conduct is found where:

[T]he actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences.

See Mercer v. Pittway, 616 N.W.2d 602 (Iowa 2000) (quoting *Fell v. Kewanee Farm Equip. Co.*, 457 N.W.2d 911, 919 (Iowa 1990)). This concept has been refined as requiring evidence of actual or legal malice. *See Gibson*, 621 N.W.2d at 396–98. Where a worker's compensation insurer denies a claimant's benefits in bad faith, despite knowing of his statutory entitlement, that insurer has acted with legal malice. *See id.* at 398. Moreover, as analyzed in the Court's discussion of federal proportionality and egregiousness, *supra*, AIIC

clearly acted with the requisite willful and wanton disregard of Plaintiff's rights. There was sufficient evidence to support a punitive damages award.

Regarding excessiveness, the Iowa Supreme Court considered the constitutionality of punitive damages under Iowa law in *Wilson*, following the United States Supreme Court's "guidepost" formula from *Gore*. See 558 N.W.2d 132. In that case, the court held prior Iowa case law tracked with the new federal standard and suggested a multi-factored approach to examining punitive damages for excessiveness. See *id.* at 147–48. The primary focus of review is whether the amount of punitive damages awarded is reasonably related to the harm suffered. See *id.* at 147. To make that reasonableness determination, awards are tested on: the extent and nature of the outrageous conduct; the amount necessary for future deterrence; the relationship between the compensatory and damages awards, and; the circumstances surrounding the relationship between the parties. See *id.* at 146 (citing *Ezzone v. Riccardi*, 525 N.W.2d 388, 399 (Iowa 1994)).

Analyzing the first and last factors together: AIIC's conduct was outrageous, and this can be seen in stark relief against the backdrop of the parties' relationship. Plaintiff was dependent on AIIC for his financial well-being following a catastrophic injury under the terms of an adhesion contract. Plaintiff could not establish his own statutory entitlement to worker's compensation benefits; could not authorize the commutation of his own benefits; could not authorize the purchase or refurbishment of his own wheelchair; nor send himself back to work or re-extend his lifespan. As the insurer of Plaintiff's benefits in the event of just the kind of catastrophe he suffered, AIIC was required to discharge its duties in good faith. Instead, it mounted a defense it knew was hopeless against a finding of permanent total disability it knew to be correct. It forced a reconsideration it knew to be irrelevant. It

threatened an appeal that, by extension, it knew to be fruitless. It then repeated this course of conduct with respect to Plaintiff's partial commutation. AIIC did all of this, not in the good faith discharge of its duties, but as leverage to force a settlement with Plaintiff for benefits less than those to which it knew Plaintiff would rightfully be found entitled. In other words, AIIC ignored its good faith duties in favor of its balance sheet, and it did so with indifference towards Plaintiff's medical and economic needs. Similar conduct has been held to be outrageous in nature and extent. *See Wilson*, 558 N.W.2d at 148.

The next factor to consider is the amount of deterrence necessary. "One of the factors approved by the [United States] Supreme Court and [the Iowa Supreme C]ourt for assessing the imposition of punitive damages is the financial position of the defendant. This bears on the factor of deterring like conduct in the future . . . ". *Id. See also Spaur*, 510 N.W.2d at 867; *Haslip*, 499 U.S. at 21. In *Wilson*, the defendant meat producer operated thirty-seven facilities in nine states, employing 29,000 people and having a net worth of \$600 million, and the court approved of a \$2 million punitive damages award resulting in a 500:1 ratio over the \$4,000 compensatory damages suffered by that plaintiff. *Wilson*, 558 N.W.2d at 148. *See also Lakin v. Richards Farm Ltd.*, 862 N.W.2d 414 (Iowa Ct. App. 2015) ("Like IBP, Lakin is wealthy.") (table). In this case, like IBP, AIIC is wealthy. Evidence was adduced showing that AIIC is a national billion-dollar business enterprise active in 37 states, with nearly all of its value held in liquid assets. In addition, the jury heard AIIC's Vice President of claims, Christopher Lestage, assert that a \$20 million benefits payout would not have injured the company. Given the above comparisons and evidence, the Court concludes that a \$25 million award was a reasonable amount for a jury to award to deter misconduct.

The final factor to consider is the relationship between the compensatory and punitive damages awards. As discussed in the prior section, the relationship here by ratio is 88:1, punitive to compensatory. Again, while there is no bright line with respect to proper ratios, awards with single digit multipliers are treated with lesser scrutiny. *See Wilson*, 558 N.W.2d at 145; *Campbell*, 538 U.S. at 418. In this case, AIIC cites only the size of the award as evidence of it lacking a reasonable relationship to the compensatory damages. Courts are cautioned against punitive damages awards that are duplicative of some portion of the compensatory awards, such as emotional distress or damage. *See id.* at 418–19. There is no suggestion of such duplication here, and a review of the record reveals no plea to the jury by plaintiff’s counsel to remedy any damages by dint of punishment rather than compensation. In any case, as under federal case law, Iowa has taken the position that higher multipliers are possible where compensatory awards do not capture all potential harm. *See Wolf*, 690 N.W.2d at 894–95 (approving a ratio of 25,000:1 where damages were only nominal, but noting that actual and potential harm were likely greater).

Taken as a whole, the size of the award can be explained by the outrageousness of AIIC’s conduct and its relatively high deterrence threshold. Thus, the award is reasonably related to the damages suffered. AIIC’s motion on this final ground will be denied.

III. CONCLUSION

The Court finds no error regarding the theory of bad faith sufficient to warrant judgment notwithstanding the verdict. The Court further finds evidence sufficient to support instructing the jury on both pain and suffering and loss of equity damages, as well as punitive damages, such that granting a new trial would not effectuate substantial justice. The Court likewise finds no evidence that the punitive damages award was a product of passion or

prejudice sufficient to warrant a new trial. Finally, the Court finds that the punitive damages award is neither grossly nor flagrantly excessive in violation of the Iowa and federal constitution so as to require an order of remittitur.

IV. ORDER

IT IS THEREFORE ORDERED that Defendant's Motion for Judgment Notwithstanding the Verdict or Alternatively for New Trial or Remittitur is DENIED.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV110614
Case Title TOBY THORNTON VS AMERICAN INTERSTATE INSURANCE CO.

So Ordered

A handwritten signature in cursive script that reads "Jeffrey L. Larson".

Jeffrey L. Larson, Chief Judge,
Fourth Judicial District of Iowa