Morton in Insurance Business: Crime and Punishment: Fraud and Punitive Damages Under English Law

By Jonathan Morton | August 8, 2018

RELATED PRACTICES Insurance Recovery, Litigation

Under English Law damages are designed to put the innocent party back in the position it would have been in had the wrong not occurred. However, the English Courts have long held the power to order what are known as “punitive” or “exemplary” damages in excess of any loss. Such damages are rarely awarded, and the application of the relevant principles is unclear. In the recent case of *AXA Insurance UK plc v Financial Claims Solutions Ltd and others*, the Court of Appeal awarded exemplary damages against insurance fraudsters whose actions it described as “*outrageous*”.

The facts

The respondents were charged with committing serious fraud against AXA Insurance in respect of claims arising from two fictitious motor accidents. The claims were brought by a fake solicitors’ firm named “Coelum Legal”.

AXA only became aware of the proceedings against it when it was served with default judgments for both claims, one of which included a claim for special damages reflecting the cost of a replacement hire vehicle, which had never actually been hired, and a personal injury claim for whiplash, supported by phony medical reports.

Attempts by AXA’s solicitors to obtain copies of the documents relating to these proceedings were refused by Coelum Legal, in a manner which the judge later described as “*obstructive and unacceptably offensive*”. Subsequent investigations revealed that the letters allegedly serving these proceedings actually contained nothing but junk mail and were accordingly disposed of by AXA’s post room staff.

AXA issued applications to strike out these claims and set aside the default judgments, and sought both compensatory and exemplary damages against the respondents for the torts of deceit and unlawful means conspiracy. However, in the High Court, while the judge awarded AXA compensatory damages, it dismissed the claim for exemplary damages on the basis that the case did not fall within the relevant principles. AXA was granted permission to appeal.

The decision

Lord Justice Flaux disagreed with the judgment of the High Court and ordered exemplary damages of £20,000 to be paid by each of the three respondents. In his view this case was “a paradigm one for the award of exemplary damages” and that “*given the need to deter and punish the outrageous conduct and abusive behavior*” of the respondents, “*a punitive award*” was entirely appropriate. In particular, he noted “*the seriousness of the conduct of the respondents and the need to deter them and others from engaging in this form of "cash for crash" fraud, which has become far too prevalent and which adversely affects all those in society who are policyholders who face increased insurance premiums*”.

© 2026 Haynes and Boone, LLP

Commentary

Traditionally the English Courts have been reluctant to award punitive damages. The landmark decision on the issue, *Rookes v Barnard* confined the remedy to three categories: (1) oppressive, arbitrary or unconstitutional conduct by government servants; (2) wrongful conduct calculated to make a profit which may well exceed the compensation payable to the claimant; and (3) where statute authorises such an award.

In his decision, the judge at first instance had relied upon the statements of Lord Devlin in *Rookes* to find that category (2) would only apply where traditional damages were inadequate to "*remove the wrongful gain achieved by the tort*", and noted that the opportunity to punish the respondents in the criminal courts remained. As such, the facts of this case "*did not remotely fall within... [the] second category*".

Lord Justice Flaux considered this to be imposing an "*unjustified limitation*" on category (2) which was inconsistent with certain later decisions. He referred in particular to the comments of Lord Justice Rix, as he then was, that exemplary damages were "*not to be contained in a form of strait-jacket, but can be awarded, ultimately in the interests of justice, to punish and deter outrageous conduct on the part of a defendant*". It was irrelevant that criminal proceedings could be brought (and indeed, already had against one respondent), as case law showed it was entirely possible for exemplary damages to be granted in such instances.

While it is clear that the amount of any such damages must be "*principled and proportionate*", it is also, following this decision, clearly established under English Law that punitive damages may be granted in cases of egregious insurance fraud. The ruling is intended to send a powerful message to anyone considering defrauding an insurance company, and is a tool any insurer seeking to recover against such fraudsters is well advised to deploy. In light of this decision, and the judge's reasoning behind it, claims for exemplary damages may well become more commonplace in the years to come.

First appeared in *Insurance Business* August 7, 2018.

© 2026 Haynes and Boone, LLP