

04-48 BARIBEAU, ET AL. V. GUSTAFSON

Decision Below: 107 S.W.3d 52 (TX 2003)

QUESTIONS PRESENTED

The district court jury (in a medical negligence action) awarded \$500 in compensatory fraud damages and \$250,000 in exemplary fraud damages. The jury also awarded \$126,784.93 in compensatory damages resulting from medical negligence and battery, which damages the jury found were not caused by the fraud. Summary judgment was granted in favor of Petitioners on the issue of exemplary damages based on the medical negligence and/or battery. The district court applied Texas Civil Practice and Remedies Code section 41.008(b), "capping" the jury's award of exemplary damages at the minimum amount required under Texas law, \$200,000. The questions presented to this Court include:

1. Whether application of the Texas exemplary damages "cap" -- section 41.008(b) or the Texas Civil Practice and Remedies Code -- results in an unconstitutionally excessive exemplary damages award and violates Petitioners' due process rights under the Fourteenth Amendment?
2. Whether the opinion or the court or appeals conflicts with this Court's opinions in *BMW Inc. v. Gore*, 517 U.S. 559 (1996), and *State Farm v. Campbell*, 538 U.S. 408 (2003), where the *de novo* review:
 - (a) failed to limit reprehensibility review to the conduct and harm resulting from fraud, the sole basis for the award of exemplary damages?
 - (b) failed to ensure that the measure of punishment (400-to-1 ratio) was both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered? And
 - (c) failed to consider comparable civil monetary penalties?