

Sixth Circuit Court of Appeals Strikes Down Tennessee's Punitive Damages Cap as Unconstitutional

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Tennessee Governor Bill Haslam made waves in 2011 when he signed the Tennessee Civil Justice Act (TCJA), a bill that capped noneconomic and punitive damages available in civil lawsuits in the state. The law was billed as a bid to draw business to Tennessee by reducing the potential legal exposure of large companies that operate or are headquartered in the state. According to TCJA advocates, the measures were designed to offer companies predictability "and a way to quantify risk as they decide where to locate."[1] Haslam pitched the bill as a way to "remove one of the few advantages surrounding states had and make our state even more desirable to businesses."[2] Alternatively, opponents claimed the bill "will fall most harshly on women, children, and the elderly" and that "there is no evidence" the bill would encourage business development in Tennessee.[3]

Whether the TCJA has had a meaningful effect on Tennessee's well-documented growth over the past seven years is difficult to say, but the damages cap has certainly ginned up its share of controversy. You can learn more about the conversation surrounding the Act after it was signed in our previous articles.

Over the past decade, the TCJA has faced judicial scrutiny in Tennessee several times, most notably in 2015 when a Hamilton County circuit judge ruled the damages cap unconstitutional.[5] The Tennessee Supreme Court vacated that ruling on appeal, however, on the grounds that the jury in the case had not yet decided on punitive damages in excess of the statutory cap.

The law remained in effect for more than seven years until a recent federal decision threw the bill, and the future of Tennessee's cap on punitive damages, into doubt. On Dec. 21, 2018, the United States Court of Appeals for the Sixth Circuit ruled 2-1 that the TCJA violates rights guaranteed by the Tennessee Constitution.[6] Under Tennessee's Constitution, "the right of trial by jury shall remain

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inviolate," meaning it shall continue to exist as it did under the laws and constitution of North Carolina at the time the Constitution was adopted 1796.[7]

In a 21-page dissenting opinion, U.S. Circuit Judge Joan Larsen laid out arguments against the ruling. First, Judge Larsen argued the state law issue is one for the Tennessee Supreme Court to decide.[8] The dissent protested the Sixth Circuit's speculative constructions of Tennessee jurisprudence, arguing that the state was better equipped to decide a novel issue of state law.[9] The dissent explained the mechanism of certification that would allow the federal court to defer to the Tennessee Supreme Court to consider the constitutionality of state law and noted repeatedly that the Tennessee Supreme Court had signaled its willingness to hear the constitutional issue on appeal.[10]

The dissent further argued that, even if the federal court were to rule on the constitutionality of the punitive damages cap, the cap should be upheld. First, procedurally, the dissent noted the underlying litigation was a federal case and under the Erie Doctrine it "is not clear that the Tennessee Constitution jury trial guarantee provides the rule of decision."[11] Second, it argued there is reasonable doubt as to whether the statute infringes the right to a trial by jury, therefore requiring that the statute be upheld because of the courts' presumption of deference to legislative bodies.[12]

The remaining Circuit Court judges were unconvinced, however. In the 25-page majority opinion, the Sixth Circuit held that, based on history and precedent, damages are a question of fact to be decided by a jury. Under this interpretation, the TCJA violates the Tennessee Constitution by interfering with the established right to a jury. The decision relies extensively on an 1839 Tennessee Supreme Court case which held that punitive damages are a finding of fact "within the exclusive province of the jury."[13] The majority also discussed a 1940 case in which the Tennessee Supreme Court held that the question of punitive damages is "always for the jury".[14]

The court then explained why it found the six arguments submitted by the defense in support of the damages cap unpersuasive.[15]

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- Whether punitive damages are a finding of fact varies state-by-state and based on prior case law and holdings in similar cases in states like Missouri, the Tennessee Supreme Court would likely apply its own rule and find the statute unconstitutional.
- The court rejected the argument that Tennessee would follow the North Carolina Supreme Court's position allowing caps on punitive damages in this case because its constitutional language about the right to a trial by jury is broader than the corresponding language in North Carolina's constitution.
- The "General Assembly's power to change the common law is subject to constitutional limits," and that, here, the inviolable right to a jury trial cannot be eliminated by the legislature.
- "Tennessee's categorical punitive damages cap…bears no relationship to…federal constitutional limits on punitive damages."
- Although punitive damages are not compensatory in nature, the right to a trial by jury has historically included the right to ask the jury to determine punitive damages for deterrence. Therefore, it argued, the state's claim that plaintiffs are never entitled to punitive damages fails.
- Caps on punitive damages are an encroachment on the jury's fact-finding role.

The Circuit Court also concluded that the Tennessee Supreme Court's historical rejection of the General Assembly's attempts to regulate the right of remittitur would control in cases involving punitive damages.

As a result of this decision, the cap on punitive damages enacted by the TCJA in 2011 is, for the moment at least, deemed unconstitutional. Asked whether the state planned to appeal, Samantha Fisher, spokeswoman for Tennessee Attorney General Herbert Slatery—who intervened in the case on behalf of the state—responded: "We are reviewing the decision by the Sixth Circuit Court."[16] If no further actions are taken, then the Sixth Circuit's holding will stand. Whether the decision will have a significant impact on Tennessee jury damages awards remains to

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be seen. For now, plaintiffs' and defendants' counsel alike will need to watch the Tennessee Supreme Court for a potential response to the Sixth Circuit's ruling.

[1] "[Sixth] Circuit panel decision strikes down Tennessee cap on 'punitive' damage awards" (last viewed Jan. 18, 2019).

[2] "Haslam Applauds Final Passage of Tennessee Civil Justice Act!" (last viewed Jan. 18, 2019).

[3] "New Tennessee Law Limits Recovery of Damages for Personal Injuries" (last viewed Jan. 18, 2019).

4 "Circuit judge rules Tennessee's tort reform limits are unconstitutional" (last viewed Jan. 18, 2019).

5 Lindenberg v. Jackson National Life Insurance Co., No. 17-6079 (Sixth Cir. 2018).

6 Tenn. Const. art. I, § 6.

7 Lindenberg v. Jackson National Life Insurance Co., No. 17-6079 (Sixth Cir. 2018).

8 Id.

9 Id.

10 Id.

11 Id.

12 Boyers v. Pratt, 1 Humph. 90 (Tenn. 1839).

13 Southeastern Greyhound Lines, Inc. v. Freels, 144 S.W.2d 743 (Tenn. 1940).

14 Lindenberg v. Jackson National Life Insurance Co., No. 17-6079 (Sixth Cir. 2018).

15 Id.

16 "[Sixth] Circuit panel decision strikes down Tennessee cap on 'punitive' damage awards" (last viewed Jan. 18, 2019).

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