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WV Supreme Court Clarifies Role of Punitive Damages Statute

On June 15, 2021, the West Virginia Supreme Court of Appeals issued its decision in *Jordan v. Jenkins*, Case No. 19-0899. The Court remanded a trial court's 60:1 punitive damages multiplier of compensatory damages for further consideration of the appropriateness of the punitive damages award, notwithstanding the award's facial compliance with a relatively new punitive damages statute in West Virginia.

Following an automobile accident, the plaintiffs, Mr. and Mrs. Jenkins, sued the tortfeasor as well as the tortfeasor's insurer, Safeco Insurance Company of America ("Safeco"). Safeco prevailed on trespass, civil conspiracy and emotional distress claims asserted by Mr. and Mrs. Jenkins, but the jury found Safeco liable for conversion and awarded \$1,000 of compensatory damages. After the trial court allowed the issue of punitive damages to go to the jury, however, the jury returned a punitive damages verdict of \$60,000. The trial court denied Safeco's motion to reduce the amount of the award, holding that the award was proper under W. Va. Code §55-7-29 (2015). That statute provides, "The amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or \$500,000, whichever is greater." The trial court reasoned that, because the \$60,000 punitive damages award was less than \$500,000 (the greater of \$500,000 or four times \$1,000), the award was appropriate.

On appeal, in its first substantive analysis of the punitive damages statute, the Supreme Court held that a defendant's due process rights are not protected when a trial court simply considers whether a punitive damages award is less than the statutory cap. Instead, the Supreme Court confirmed, the trial court must go beyond merely looking at the statute, and must instead make a "meaningful and adequate review" of the award by considering several common law factors. These factors, as detailed in *Garnes v. Fleming Landfill, Inc.*, 186 W. Va. 656, 413 S.E.2d 897 (1991), TXO

Production Corp. v. Alliance Resources Corp., 187 W. Va. 457, 419 S.E.2d 870 (1992) and their progeny, including whether there is a reasonable relationship to the harm likely to occur and the harm that actually occurred; whether there is reprehensibility of the conduct; and whether the defendant profited from the conduct. Further, according to *Garnes*, “As a matter of fundamental fairness, punitive damages should bear a reasonable relationship to compensatory damages.”

The Supreme Court further confirmed the applicability of earlier precedent regarding presumptive ratios of punitive damages, holding, “The outer limit of the ratio of punitive damages to compensatory damages in cases in which the defendant has acted with extreme negligence or wanton disregard but with no actual intention to cause harm and in which compensatory damages are neither negligible nor very large is roughly 5 to 1. However, when the defendant has acted with actual evil intention, much higher ratios are not per se unconstitutional.” *Alkire v. First. Nat. Bank of Parsons*, 197 W. Va. 122, 125, 475 S.E.2d 122 (1996). In light of this dichotomy, the Supreme Court charged the trial court on remand with evaluating whether Safeco’s conduct involved “actual malice” – which may subject defendants to a higher ratio of punitive damages – or “conscious, reckless and outrageous indifference” – for which the lower ratio is appropriate.

One of the five justices dissented regarding the above issues, instead of holding that the punitive damages statute had replaced the common law considerations. It was interesting to note that, while the majority decision did not expressly instruct the trial court to reduce the award from \$60,000 to approximately \$5,000, the dissenting justice noted, “Clearly, the majority is offended by the 60:1 ratio between the compensatory damages and punitive damages and seeks to utilize *Garnes* to bring that ratio more in line with the 5:1 ratio sanctioned in *TXO*.”

In sum, the Supreme Court’s decision confirms that while §55-7-29 creates one cap on punitive damages awards in West Virginia, the statute does not abrogate decades of common law due process precedent. While punitive damages cannot now exceed the formulaic statutory cap in West Virginia, not every award less than

the cap satisfies a defendant's due process rights.

Bill Harter of Frost Brown Todd was trial counsel and appellate counsel for Safeco in this litigation. If you have questions regarding this decision or other tort- or insurance-related matters, please contact [Bill Harter](#) or any attorney with Frost Brown Todd's [Insurance Coverage & Bad Faith](#) practice group.

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