

# SOUTH CAROLINA Insurance LAW BLOG

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## South Carolina Enacts Tort Reform Placing Limits on Punitive Damage Awards



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- Insurance Coverage
- Premises Liability
- Retail / Hospitality / Entertainment Law

Greetings from Greenville, S.C.!

I'm Logan Wells, and I would like to thank you for being a part of my first blogging experience. Thankfully, tort reform in South Carolina, the topic of my first ever blog post, is of great interest and significance to me and hopefully to you as well. This first post is about the limits now placed on punitive damage awards. If you have any questions/comments, please don't hesitate to contact me. - Logan

On June 14, 2011, the South Carolina Fairness in Civil Justice Act of 2011 was signed into law. The Act will become effective on January 1, 2012, making significant changes to the law concerning punitive damage awards in South Carolina.

### Caps on Punitive Damages Awards

Generally, under the Act, no award of punitive damages may exceed the greater of three times the compensatory damage awarded to each plaintiff or the sum of \$500,000.00. However, the cap may be increased to the greater of four times the amount of compensatory damages awarded to each claimant or \$2 million if:

- (1) the defendant's conduct was motivated primarily by unreasonable financial gain and the unreasonably dangerous nature of the conduct and the high likelihood that injury would result from the conduct was known or approved by the managing agent, director, officer or the person responsible for making policy decisions for the defendant; OR
- (2) the defendant's conduct which was the proximate cause of the plaintiff's damages could subject the defendant to conviction of a felony.

Furthermore, the caps on punitive damages are subject to exceptions. Under the Act, there are no caps on punitive damages if:

- (1) at the time of the injury, the defendant had an intent to harm and did in fact harm the plaintiff; OR
- (2) the defendant has plead guilty to or been convicted of a felony and the course of conduct which is the basis of the felony was the proximate cause of the plaintiff's damages; OR
- (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired.

## Other Changes to South Carolina Law on Punitive Damages

The Act also makes other changes to South Carolina's law concerning punitive damages. A plaintiff now must specifically ask for punitive damages in the complaint. In addition, under the Act, a defendant has a right to a bifurcated trial if requested. In the first stage of the trial evidence the jury determines liability and the amount compensatory damages. Evidence relevant only to the issue of punitive damages is not admissible at this stage. In the second stage of a bifurcated trial, the jury shall determine if a defendant is liable for punitive damages, and if determined to be liable, the amount of punitive damages. In determining the amount of punitive damages, the jury may consider all relevant evidence including, but not limited to:

- (1) the defendant's degree of culpability;
- (2) the severity of the harm caused by the defendant;
- (3) the extent to which the plaintiff's own conduct contributed to the harm;
- (4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant;
- (5) the existence of similar past conduct;
- (6) the profitability of the conduct to the defendant;
- (7) the defendant's ability to pay;
- (8) the likelihood the award will deter the defendant or others from like conduct;
- (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff;
- (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and
- (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

If the jury awards punitive damages, the trial court must review the jury's decision, considering all relevant evidence including the 11 aforementioned factors. In an action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant.

### About Logan Wells

Logan Wells is an associate practicing in the areas of premises liability, retail / hospitality / entertainment and insurance coverage. She received her undergraduate degree in history and political science from Furman University and earned her juris doctor from the University of South Carolina School of Law.

During her undergraduate career, she worked for a law firm in Spartanburg as a legal assistant. While in law school, she worked as a summer associate for Collins & Lacy, before joining the firm as an attorney in the fall of 2009.

### About Collins & Lacy, P.C.

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- insurance/bad faith
- products liability
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