

Tennessee Supreme Court Declines to Shut Door on High Punitive Damages Awards

On November 3, 2009, the Tennessee Supreme Court issued the newest in a line of often convoluted and controversial decisions coming out of the country's courts addressing the propriety and reasonableness of certain punitive damages awards.

In *Goff v. Elmo Greer & Sons Constr. Co., Inc.*, the plaintiff landowners brought suit against the defendant road construction contractor as a result of the defendant's activities and use of their land during a road-widening project. The plaintiffs claimed that during the project there were often large oil deposits in the area where the defendant staged its equipment, and that the area was being used to store tires, batteries, vehicle parts, oil drums, and various other items. When questioned about the condition of the area, the defendant's personnel allegedly told the plaintiffs "not to worry about it" and "we'll clean it up." At the conclusion of the project, the defendant removed its equipment from the property and compacted, graded, and seeded the fill area. The landowners were convinced that the defendant had buried tires and other materials on their property, so they arranged for part of the area to be excavated. During this excavation, tires, including one that was eight feet tall and weighed at least a ton, and steel pipes were found buried eight to nine feet deep under a layer of compacted rocks.

In their complaint, the plaintiffs sought compensatory damages in the amount of \$500,000 and \$1 million in punitive damages. At trial, the jury heard a number of witnesses testify that given the circumstances, it would have had to have been an intentional act for the tires unearthed in the fill area to have been buried as they were. Following the trial, the jury awarded the plaintiffs just over \$18,000 in compensatory damages and \$1 million in punitive damages. The case was eventually appealed to the Tennessee Supreme Court.

The Supreme Court analyzed the propriety and reasonableness of the trial court's punitive damages award. While compensatory damages are intended to compensate injured parties for personal injuries and property damages they have suffered in order to make them whole again, punitive damages are intended to "punish a defendant, to deter him from committing acts of a similar nature, and to make a public example of him." Punitive damages are only appropriate "in the most egregious cases" and, therefore, must be supported by clear and convincing evidence that the defendant acted intentionally, fraudulently, maliciously, or recklessly.

In analyzing the facts of this case, the Court concluded that the defendant acted intentionally, or at least recklessly, in burying the tires on the plaintiffs' property, and, thus, that punitive damages were warranted. However, the Court then went on to analyze whether the trial court's punitive damages award was excessive, and, thus, violated the defendant's constitutional due process rights. In *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562-63 (1996), the United States Supreme Court set out three guideposts to be used in determining whether a punitive award is grossly excessive and violates due process:

- (1) the degree of reprehensibility of the defendant's conduct;
- (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and
- (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *Gore*, 517 U.S. at 574-75.

More recently in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), the United States Supreme Court attempted to more specifically define what a reasonable punitive damages award should look like under a constitutional due process backdrop. Although the Supreme Court has repeatedly refused to "impose a bright-line ratio which a punitive damages award cannot exceed," the Supreme Court in *Campbell* indicated that "few awards exceeding a single-digit ratio between punitive and compensatory damages . . . will satisfy due process." *Campbell*, 538 U.S. at 425.

After considering the three constitutional guideposts, the Court in *Goff* found that the \$1 million punitive damage award approved by the trial court was excessive and violated the defendant's due process rights. The Court, therefore, modified the award to \$500,000, reasoning as follows: "This award sends a strong message about the serious nature of Elmo Greer's misconduct. At the same time, however, it is more rationally related to the non-physical harm suffered in this case."

How Does This Affect You?

This case is an important one in Tennessee's punitive damage jurisprudence given the Tennessee Supreme Court's approval of a punitive damages award that when compared to the approximately \$18,000 compensatory damage award represents a ratio significantly higher than the single-digit ratio that has become the norm in predicting likely punitive damage awards in Tennessee. Although the Court modified the trial court's punitive award by cutting it in half, a \$500,000 punitive damage award remains a significant departure from those that would generally be expected in this State. This decision will surely be used regularly as ammunition by plaintiffs' attorneys in punitive damage cases in this State, particularly in cases where there is limited compensatory damage exposure but punitives remain in play. It will also make the difficult job

of predicting likely jury verdict exposure by defendants and their counsel even more difficult going forward.

If you have any questions about punitive damages in Tennessee, please feel free to contact [Jim Beakes](#), [David Johnson](#) or any other member of the [Litigation Practice Group](#) at Miller & Martin.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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