

The Supreme Court of Missouri Narrowly Upholds Missouri's Punitive Damages Cap: For Now

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On January 31, 2012, in a 3-2 split, the Missouri Supreme Court upheld Missouri's punitive damages cap, § 510.265 RSMo (2010), in the *Estate of Max E. Overbey and Glenna Overbey v. Franklin*, SC-91369. Section 510.265 provides that "no award of punitive damages against any defendant shall exceed the *greater of* (1) \$500,000, or (2) five times the net amount of the judgment awarded to the plaintiff against the defendant." The statute provides for three exceptions to this general rule – (1) when the State is the plaintiff, (2) when the defendant has pled guilty to or is convicted of a felony arising out of the acts or omissions pled by the plaintiff, and (3) when the case involves housing discrimination. The *Overbey* majority addressed each aspect of the statute, finding the statute to be constitutional and a valid exercise of legislative power.

In *Overbey*, the plaintiffs ("Overbey") brought an action based on the Missouri Merchandising Practices Act (MMPA) alleging that Chad Franklin ("Franklin") and his company ("National") defrauded them in the sale/lease of a vehicle. In ruling for the plaintiffs and against Franklin, the jury awarded the Overbeys \$4,500 in actual damages and \$1,000,000 in punitive damages.¹ The trial court reduced the jury's award of punitive damages to \$500,000 pursuant to the cap. Both the plaintiff and defendant appealed the award of damages – plaintiffs arguing that the award should be reinstated because the cap violated their right to a trial by jury and the defendant arguing that the award of \$500,000 violated his due process rights because the punitive damages award was unconstitutionally excessive when compared to the actual damages suffered by the plaintiffs.

Addressing the defendant's argument first, the Court found that, although a small ratio between the actual damages and the amount of punitive damages is desirable, "[i]n the case of small awards, due process does not prevent large ratios if necessary, given particular facts, to impose punishment and to deter future misconduct." The Court recounted how courts have approved punitive awards with similar ratios when certain egregious conduct is determined to have occurred. Here, the Court found that defendant's conduct was egregious and justified the imposition of such an award.

Likewise, the Court found that the General Assembly appropriately exercised its power to limit the amount of punitive "relief" available when a plaintiff seeks statutory relief. In other words, the General Assembly has the authority to choose and limit the appropriate relief available to a litigant suing under a statute. Here, the plaintiffs brought their claims under the MMPA, thus, their claims and relief are limited by the statutory cap.

The Court took great pains to differentiate a cause of action filed pursuant to a statute versus a common law cause of action. As noted, the Court reiterated that because the Overbeys cause of action was pursuant to a statute, their cause of action could also be limited by a statute. The Court did not take the next step and indicate that regardless of the basis of the lawsuit (statute v. common law), the punitive

¹ The jury also found in favor of the Overbeys and against National. However, National did not appeal the judgment.

damages cap applies. Thus, while the drafters of the cap statute did not limit its provisions to statutory causes of action, it appears the Court may be willing to find that the punitive damages cap may violate the Seventh Amendment of the United States Constitution when applied to pure common law actions, such as fraud or misrepresentation.

The dissent took the majority to task on their reasoning that “the statutory cap on punitive damages does not violate the Overbeys’ right to a jury trial because the legislature could have precluded recovery of punitive damages altogether.” Instead, the dissent stated that “the constitutional right to a trial by jury attaches to claims that actually are prosecuted under existing law” and that “[h]aving given the Overbeys the option to exercise their constitutional right to a jury trial, the legislature cannot limit that right statutorily.” Thus, the dissent would hold that once a right to a trial by jury attaches, the General Assembly cannot limit that right in any way. Therefore, both statutory claims (unless the conferring statute itself expressly forbids punitive damages) and common law claims could not be limited by the punitive damages cap.

Nevertheless, what is certain is:

- Section 510.265 is constitutional when a Plaintiff sues pursuant to a Missouri statute;
- The Missouri Supreme Court will entertain and allow punitive damages awards that are in excess of single digit ratios;
- “Egregious conduct” may warrant higher ratios between actual and punitive damages under normal punitive damage policy considerations – punishment and deterrence;
- The General Assembly has the power to limit damages; and
- Legislatures may avert the dissent’s analysis by expressly precluding punitive damages or by specifically incorporating the cap.

As a result, when egregious conduct is alleged, plaintiffs should carefully select whether they want to proceed with a statutory or common law claim as they may unwittingly limit the amount of relief that could be awarded.

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