



## MISSOURI SUPREME COURT HOLDS STATUTE CAPPING PUNITIVE DAMAGES VIOLATES RIGHT TO TRIAL BY JURY

*Lewellen v. Franklin*, --- S.W.3d ---, 2014 WL 4425202,  
(Mo. banc September 9, 2014)

On September 9, 2014, in a unanimous opinion authored by the Honorable Patricia Breckenridge, the Missouri Supreme Court struck down as unconstitutional a Missouri statute which imposed a cap on the amount of punitive damages awarded to the greater of \$500,000 or five times the net amount of the judgment awarded a plaintiff against a defendant. The punitive damages cap had been part of Missouri's 2005 tort reform legislation.

Plaintiff Lillian Lewellen filed an action alleging fraudulent misrepresentation and unlawful merchandising practices against a motor vehicle dealership and its owner. The jury awarded Ms. Lewellen actual damages on each of the two claims and \$1,000,000 in punitive damages against each defendant. Post-verdict, the trial court reduced the actual damages award and reduced the two punitive damage awards to the statutory limit of \$500,000 pursuant to Section 510.265, RSMo (Supp. 2013). All parties appealed.

On appeal, Ms. Lewellen claimed the statutory cap on punitive damages was unconstitutional because it violated her rights to trial by jury, due process, and equal protection, as well as the separation of powers doctrine. In a somewhat summary fashion, the Supreme Court held its 2012 decision in *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. banc 2012), is controlling as to the constitutionality of the statutory caps. The *Watts* court held applying a statutory cap on noneconomic damages in a medical negligence case violated Missouri's constitutional right to jury trial. *Id.* at 638. According to the *Watts* court, the phrase "shall remain inviolate" in article I, section 229(a) of the Missouri Constitution means that any change in the right to a jury determination of damages as it existed in 1820 (the adoption date for the Missouri Constitution) is unconstitutional.

Here, the Court noted that in 1820 there existed a right to a jury determination of the amount of punitive damages in a fraud case. Thus, the punitive damages cap of Section 510.265 "necessarily changes and impairs the right of a trial by jury 'as heretofore enjoyed.'" 2014 WL 4425202, \*5 (citing *Watts*, 376 S.W.3d at 640). "Because section 510.265 changes the right to a jury determination of punitive damages as it existed in 1820, it unconstitutionally infringes on Ms. Lewellen's right to a trial by jury protected by article I, section 22(a) of the Missouri Constitution." *Id.* Since the Court found the statute violative of the right to jury trial, it did not address Ms. Lewellen's other constitutional challenges.

In a similarly truncated fashion, the Court rejected the defendants' attempt to distinguish this case from *Watts*. Defendants argued that, unlike the noneconomic damages at issue in *Watts*, punitive damages are subject to due process limitations, and as a result, the legislature may also impose legal limits upon them through a statutory cap. The Court disagreed, noting the limitations imposed by Section 510.265 are not of the same species as those required by the Due Process Clause of the United States Constitution. Importantly, the United States Supreme Court has explicitly refused to establish a bright-line ratio that a punitive damages award cannot and has been reluctant to recognize concrete limits imposed by due process. *State Farm Mut. Auto. Inc. Co. v. Campbell*, 538 U.S.408, 425 (2003). Rather, under *State Farm*, the precise award in any case must be based upon the facts and circumstances of the plaintiff's injury and the defendant's conduct. *Id.* Section 510.265, rather than being based on the facts or circumstances of a case, caps the punitive damages award at a certain level regardless of the facts and circumstances of the particular case. Due process requires a court to review a punitive damages award under the considerations articulated by the United States Supreme Court to prevent grossly excessive or arbitrary awards, but Section 510.265 is not a codification of due process in that it operates wholly independent of the facts of the case. Thus, according to the Court, while Section 510.265 is unconstitutional as violative of the right to trial by jury and should no longer be applied, trial courts remain bound to review a punitive damages award under the Due Process Clause.



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