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Damages Pt. 10 – Punitive Damages Under Indiana Law

It is one of the most well known phrases in all of the law of damages. Almost everyone has heard the term punitive damages. It is what took a \$160,000 personal injury case against McDonalds into a jury award of \$2.86 million. However, few have a grasp on this area of the law. In this week's installment on Damages, the attorneys at Pavlack Law discuss the availability of punitive damages under Indiana Law.

In order to understand how Indiana approaches punitive damages awards, it is important to understand the fundamental purpose of punitive damages. The Indiana Court of Appeals has stated that “[t]he purpose of punitive damages is not to compensate or reward the plaintiff; it is to penalize a defendant.” This is in complete opposition to the standard measure of damages. The commonly stated purpose of damages is “to make the wronged party whole.” The kind of damages that are solely to try and make an injured party whole again are often referred to as “compensatory damages,” because they are designed to compensate the injured person for his or her injuries. Whereas, with punitive damages the purpose is to disincentivize the defendant – to punish a party for its actions to insure that it will not repeat such actions.

The best example for the need for punitive damages arises from the infamous Ford Pinto Memo. In the case of the Ford Pinto there existed a design defect that often resulted in the vehicle's gas tank being punctured and igniting after a rear-

end collision. What makes the Ford Pinto case and the Memo so infamous is that there was a document indicating that Ford had balanced the cost to resolve lawsuits from the deaths and injuries as a result of the defect against the cost of repairing it. The memo found:

Benefits

Savings: 180 burn deaths, 180 serious burn injuries, 2100 burned vehicles

Unit Cost: \$200,000 per death, \$67,000 per injury, \$700 per vehicle

Total Benefit: $180 \times (\$200,000) + 180 \times (\$67,000) + 2100 \times (\$700) = \mathbf{\$49.5 \text{ Million}}$

Costs

Sales: 11 million cars, 1.5 million light trucks

Unit Cost: \$11 per car, \$11 per truck

Total Cost: $11,000,000 \times (\$11) + 1,500,000 \times (\$11) = \mathbf{\$137 \text{ Million}}$

What this analysis says is that the projected cost to Ford of not fixing the problem was \$49.5 million. The costs to the consumer however were projected at 180 deaths in the most horrific manner of burning to death, 180 more suffering serious burn injuries, and 2,100 vehicles being destroyed. If you ever wondered whether you could put a price on a life, then Ford's answer at this time was yes and the going rate was \$200,000 for a person to die in one of the most painful manners known to man. This cost to the company was seen as more desirable – aka cheaper – than fixing the problem. The repair cost was projected as \$11 per vehicle. However, with the number of vehicles projected at 12.5 million, the total cost was \$137 million. So Ford made the callous choice to go with the less expensive approach regardless of the impact on human lives.

The reason that the Ford Pinto is the perfect example for the need for punitive damages is because punitive damages allow courts to skew Ford's cost-benefit analysis in favor of humanity and allow the balance to tip back in the favor of justice away from purely greedy and evil motivations. Punitive damages allowed for this by making the cost to Ford for taking such actions exceed the cost of the loss of life of an individual and allow the court to punish Ford until it returned to its senses. This happened in the case *Grimshaw v. Ford Motor Company*. In that case a driver and passenger became victims of the Ford Pinto design defect. The resulting fire killed the driver and inflicted extremely serious injuries upon the thirteen-year old passenger. The jury awarded \$560,000 to the family of the driver and \$2.5 million to the passenger in compensatory damages. Then, obviously disgusted by the actions of Ford, the jury awarded \$125 million in punitive damages. Though, the punitive damages verdict was ultimately reduced to \$3.5 million.

In *Grimshaw*, we see the perfect example of the need for punitive damages.

However, *Grimshaw* is not the case that comes to mind for most people – even attorneys – when someone says punitive damages. That title, sadly, is held by *Liebeck v. McDonald's Restaurants* – aka the McDonald's Coffee Case. Countless myths and misconceptions have arisen from this case and regrettably these myths have so clouded public conception that it has resulted in changes of the law all across the country and led many states to castrate punitive damages law. Our regular readers will note that we typically provide a hyperlink to any case that is discussed on the Hoosier Litigation Blog. Notice that for *Liebeck* there is no such link. That is because the case was a state trial court decision, which, as a general rule, are not published. The lack of access to the actual case definitely contributes to the myths about the case.

The facts of *Liebeck* are that Stella Liebeck, a 79 year old woman, was a passenger in a car driven by her grandson. Stella ordered a cup of McDonald's coffee in the drive-thru. Right after getting the coffee Stella's grandson pulled the car forward and then stopped to allow his grandmother to add cream and sugar to her coffee. In order to do this, the elderly woman placed the cup between her knees and tried to remove the lid. When she did this she lost control of the cup and spilled it into her lap. The result was that Stella suffered third-degree burns over 6 percent of her body. Stella was confined to a hospital for eight days and had to suffer through skin grafts. She lost 20 lbs. from in this time – which may sound great to many of our readers, however, Stella was only about 100 lbs. to begin with. As you can see this was not the mid-30s business woman in a hurry to get to work who foolishly tried to drive and fumble with her coffee spilling just part of it onto her pants suit. This was an elderly woman in sweat pants who was a passenger in her grandson's car taking an action that any reasonable person would not feel afraid to take.

Throughout the course of the litigation Stella and her attorney tried frequently to settle the case. Stella initially offered to settle the case for \$20,000. This included the \$10,500 she had paid for medical expenses, the \$2,500 she was expected to incur as future medical expenses, and the \$5,000 that she had lost in wages. McDonald's countered her offer with an offer of \$800. After retaining counsel, Stella again offered to settle the case, this time for \$90,000 and again McDonald's declined. Again, Stella tried to settle it for \$300,000 and McDonald's refused. On the eve of trial a mediator suggested that McDonald's settle for \$225,000. But again, Stella's attempts to settle the case were rebuked.

The case proceeded to trial. At trial the jury awarded Stella \$160,000 for her injuries and sought to punish McDonald's to the tune of \$2.7 million – which was roughly equal to two days worth of McDonald's revenues from the sale of coffee. While this is undoubtedly a large number let us consider how that number came about – also note that this total number is \$2.86 million, a far cry from the tens of

millions of dollars judgment that surrounds the legend of this case. Firstly, note that Stella's physical injuries were quite severe. For her injuries the jury found McDonald's liable for \$200,000. Now you are surely thinking, "\$200,000? But I thought you said they awarded her \$160,000?" Both of these statements are correct. Remember from Pt. 3 in our series on damages, when assessing damages the law will reduce the amount of damages in proportion to the amount of fault allocated to the plaintiff. In Stella's case the jury found that she was 20% at fault for her injuries. Thus, they reduced her award by \$40,000 – *id est* 20% of \$200,000.

Now let us examine the punitive damages portion of the judgment. Remember, the purpose of punitive damages is to punish the defendant. So what was McDonald's being punished for, you ask? During the discovery process, Stella's attorney acquired documents from McDonald's that showed that more than 700 customers had claimed to have been burned by the McDonald's coffee in just a 10 year period of time between 1982 and 1992. There is also the great misconception that this was just a fairly hot cup of coffee, but few people recognize just how hot McDonald's coffee used to be. Consider that a homebrew is usually around 135° to 140°. McDonald's coffee was sold at around 185°. It was further established at trial that at 180° a coffee spill takes between 2 to 7 seconds to cause third degree burns. Had the coffee been at 155° then the coffee would cool before it caused such serious burns.

So what to take from the verdict, realize that this was not an isolated incident of McDonald's coffee spilled. It was one of many hundreds of incidents of serious injury. Furthermore, McDonald's was fully aware of the danger and yet continued to sell their coffee at an extremely high temperature. Now, McDonald's and many coffee purists contend that the coffee is only at its best when it is that hot, but the risk is ludicrous in light of the marginal benefit. Also, to make one point very clear, the punitive damages were not some ludicrous disregard for the facts. The ultimate award was reduced from \$2.7 million to \$480,00 – or three times the compensatory damages of \$160,000. The total of the final judgment was \$640,000. However, both sides appealed the judgment and agreed to a settlement prior to a determination of the appeal. The settlement is confidential – so we will never know the ultimate result of the case, though it is widely believed that the settlement was for an amount less than \$600,000.

Even though, at the end of the day Stella Liebeck received less than \$600,000 for very serious injuries, the myth that she was some floosy who is now living it up in her Beverly Hills Mansion persists and is offhandedly stated in court rooms all across the nation as though it is dogmatic fact. Indiana, is one of the many states whose punitive damages law has been extremely limited. The Seventh Circuit Court of Appeals in discussing Indiana law stated:

The Indiana Supreme Court has expressly held that “punitive damages may be awarded upon a showing of willful and wanton misconduct.” [The case *Orkin Exterminating Co., Inc. v. Traina*] establishes that Indiana courts may impose punitive damages in order to penalize “conscious and intentional misconduct which, under the existing conditions, the actor knows will probably result in injury”; “conscious indifference,” “heedless indifference” and “reckless disregard for the safety of others”; “reprehensible conduct” or “heedless disregard of the consequences [of one's conduct].”

To summarize, punitive damages are only available where the defendant has taken some conscious act. This means that it is not available where the defendant was only negligent. Thus, the availability of punitive damages is very limited.

Additionally, the amount that can be recovered is governed by Indiana statute and that amount is far less than the \$2.7 million initial judgment for Stella or the ultimate \$3.5 million in *Grimshaw*. The Indiana Code provides limits punitive damages to the greater of three times the amount of compensatory damages or \$50,000. Moreover, where the Jury awards an amount in excess of this cap, the cap will still limit the recovery. Moreover, a successful plaintiff can only retain 25% of any punitive damages. The other 75% is paid into the violent crime victims fund. While this seems like a large sum of money, it ultimately acts to largely defeat the power and effect of punitive damages.

In order to illustrate this point, let us return to the Ford Pinto Memo. Based upon the calculations for the Ford Pinto Memo the compensatory damages to a deceased person was \$200,000. For an injured person who survived was only \$67,000. For the costs of destroyed vehicles the value was placed at \$700 per vehicle. Due to the nature of punitive damages it is unlikely that very many of the destroyed vehicle cases could seek punitive damages. Thus, that portion of the calculation ought not to be taken into account. So, applying the Indiana cap let us examine the impact on the Ford Pinto Memo. For the deceased and injured persons categories let us increase the values by three times each and see the impact. Thus, the \$200,000 for a deceased person now equals \$800,000 and the \$67,000 per injured person now equals \$268,000.

Initial Memo Value

Savings: 180 burn deaths, 180 serious burn injuries, 2100 burned vehicles

Unit Cost: \$200,000 per death, \$67,000 per injury, \$700 per vehicle

Total Benefit: 180 x (\$200,000) + 180 x (\$67,000) + 2100 x (\$700)
= **\$49.5 Million**

Indiana Punitive Damages Value

Savings: 180 burn deaths, 180 serious burn injuries, 2100 burned vehicles

Unit Cost: \$800,000 per death, \$268,000 per injury, \$700 per vehicle

Total Benefit: 180 x (\$800,000) + 180 x (\$268,000) + 2100 x (\$700)

= \$193.71 Million

So the result has succeeded in placing the value above the \$137 million cost to repair the cars. Thus, the balance would have been tipped in favor of repairing the vehicles. However, this makes the assumption that every single injured person would succeed in obtaining a maximum recovery under the punitive damages portion. It also is premised on a ridiculously inexpensive repair that is only \$11. If you are wondering just how much more expensive the repair would have had to have been to tip the balance back to allowing people to die, the answer is that the cost of the repair outweighs the cost of litigation under these facts if the repair were to cost a measly \$15.52. That's it. For the additional cost of \$4.52 per vehicle – less than the price of a McDonald's value meal – a corporation's bottom line favors letting innocent people die even with the threat of punitive damages.

While this calculation is based on some out of date figures, the bottom line is the same. The bottom line is what matters and punitive damages exist to skew that bottom line number in favor of basic and fundamental concepts of the value of human life.

Join us again next week for the next installment in our series on damages.

- Pt. 1 – Introduction to Damages and Loss of Consortium
- Pt. 2 –Duty to Mitigate Damages
- Pt. 3 –Diminished Value of Vehicle Due to Traffic Accident
- Pt. 4 – Damages for Negligently Inflicted Emotional Distress
- Pt. 5 – Assessing Damages When Injured Person is Partially at Fault
- Pt. 6 – Availability of Prejudgment Interest
- Pt. 7 – Indiana Crime Victim's Relief Act
- Pt. 8 – Ability to Recover by Piercing the Corporate Veil
- Pt. 9 – Damages for the Loss of Chance of Survival from Medical Malpractice
- Pt. 11 – Wrongful Death
- Pt. 12 – Contract Damages

Sources

- *Forte v. Connerwood Healthcare, Inc.*, 702 N.E.2d 1108, 112 (Ind. Ct. App. 1998).

- *Grimes v. Jones*, 567 N.E.2d 858, 860 (Ind. Ct. App. 1991).
- Christopher Leggett, “The Ford Pinto Case: The Valuation of Life as it Applies to the Negligence-Efficiency Argument.”
- *Grimshaw v. Ford Motor Co.*, 119 Cal.App.3d 757, 174 Cal.Rptr. 348 (Cal. Ct. App. 1981).
- *Commercial Union Ins. Co. v. Ramada Hotel Op. Co.*, 852 F.2d 298 (7th Cir. 1988).
- *Orkin Exterminating Co., Inc. v. Traina*, 486 N.E.2d 1019 (Ind. 1986).
- Ind. Code § 34-51-3.

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