

MISSOURI MODIFIES PUNITIVE DAMAGES LAW

The Missouri legislature has now made it more difficult for a litigant to plead and prove punitive damages. Although there have been prior efforts by the Missouri legislature to restrict punitive damages recovery, including 2005 legislation that implemented a cap on punitive damage, such efforts have been watered down over the years by the Courts. Specifically, in 2014 the Missouri Supreme Court struck down a punitive damages cap for tort actions that existed at common law finding such cap violated the right to trial by jury. In order to address the liberal nature in which courts have allowed discovery directed at punitive damages as well as claims for punitive damages to be submitted to the jury, the Missouri legislature recently enacted several reforms that are now in effect for cases filed on or after August 28, 2020.

Burden of Proof for Punitive Damages Raised:

The new law at R.S.Mo., §510.261.1 clarifies the burden of proof and heightened standard of liability for a party to establish a claim for punitive damages. The new law codifies the “clear and convincing evidence” burden of proof necessary for punitive damages that has been applied by Missouri courts and was adopted by the Missouri Supreme Court in *Rodriguez v. Suzuki Motor Corp.* in 1996. Under the new R.S.Mo., §510.261.1, “punitive damages shall not be awarded unless the claimant proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others.” This clear and convincing evidence burden of proof essentially falls between the ordinary civil standard “preponderance of the evidence” burden of proof and the criminal standard of “beyond a reasonable doubt.” The second portion of this section of the new law codifies the conduct or standard of liability for punitive damages to be awarded now requiring much more than just a finding of negligence or even recklessness.

A new standard of liability has also been implanted to establish a claim for punitive damages against healthcare providers as codified in R.S.Mo., §538.210(8). Prior to the enactment of the new law, an award of punitive damages against a healthcare provider could have been made by establishing the healthcare provider demonstrated “willful, wanton, or malicious misconduct.” Under the new law, punitive damages against healthcare providers “shall be made only upon a finding by the jury that the evidence clearly and convincingly demonstrated that the healthcare provider intentionally caused damage to the plaintiff or demonstrated malicious misconduct that caused damage to the plaintiff.” The legislature further codified that “evidence of negligence including, but not limited to, indifference to or conscious disregard for the safety of others shall not constitute intentional conduct or malicious misconduct.” Clearly, the legislature is providing courts with clarity regarding the burden of proof and standard of conduct required in order to assess punitive damages.

Nominal Damages Insufficient for Recovery of Punitive Damages:

The new R.S.Mo., §510.261(2) establishes that punitive damages may only be recovered if the trier of fact awards more than nominal damages, except in cases that invoke privacy rights, property rights, or rights protected by the Missouri or U.S. Constitutions. The legislature further codified that the amount of punitive damages shall not be based, in whole or in part, on harm to

non-parties. This new provision should eliminate those cases with little or no damages and yet the plaintiff's attorney argues that the defendant's conduct merits an award of punitive damages.

Limitations on Vicarious Liability for Punitive Damages:

Punitive damages may only be awarded against an employer or other principle due to an employee's conduct in limited circumstances essentially incorporating a "complicity rule" to limit punitive damages in vicarious liability cases. Punitive damages can only be awarded against an employer or other principle for an agent's acts if (1) the principle or managerial agent authorized the doing and the manner of the act, (2) the agent was unfit and the principle was reckless in employing or retaining such agent, (3) the agent was employed in a managerial capacity and acting in the scope of employment, and (4) the principle ratified or approved the act. R.S.Mo., §510.261(3). The new law seemingly protects employers from liability for punitive damages or acts by rogue employees or those acting outside the course and scope of employment. When an employer admits liability for the actions of an employee in a claim for compensatory damages, the Court will grant limited discovery consisting only of employment records and documents or information related to the employee's qualifications. R.S.Mo., §510.261(3). This provision would seemingly have the effect of reducing far fetched discovery into areas far beyond the incident in question.

Changes to Punitive Damages Pleading Requirements:

The new law changes the procedure for pleading punitive damages in an attempt to weed out meritless claims and prevent unjustified claims that in the past may have led to time consuming discovery efforts. Previously, claims for punitive damages were often included in the initial Petition which allowed such claims to be pled without evidentiary support. Under the new law, a claim for punitive damages may be filed only with leave of Court after a written Motion by the claimant filed no later than 120 days prior to the final Pretrial Conference or, if no scheduled Pretrial Conference, 120 days prior to the trial. R.S.Mo., §510.261(4). The written Motion must be supported by Affidavits, Exhibits, or discovery materials establishing a reasonable basis for recovery of punitive damages. An opposing party may file Affidavits, Exhibits, or discovery materials demonstrating that the standard for a punitive damages award pursuant to the new law has not been established. If after reviewing all materials submitted, the trial court determined that based on the evidence to be admitted at trial a trier of fact could reasonably conclude, based on clear and convincing evidence, that the standard for a punitive damages award has been met, the Court shall grant leave to file the pleading seeking a punitive damages award. This provision should also limit costly and time consuming, as well as invasive and proprietary discovery. Previously, discovery as to a defendant's assets was allowed after a finding by the trial court that it is "more likely than not" that the plaintiff will be able to present a submissible case for punitive damages. Now the claimant will have to meet the heightened standard for punitive damages and undergo an evaluation by the trial court following the clear and convincing evidence standard before being submitted to discovery related to punitive damages.

What is the Impact of these Changes:

Most importantly, the new law raises the burden of proof to prove punitive damages and clarifies the standard of liability for the conduct in which punitive damages may be recovered. The procedural safeguards ensuring that a plaintiff can show there is actually a case for punitive damages before such damages are pled, limits invasive, time consuming, and costly discovery that defendants were often previously faced with prior to punitive damages even being determined to be submissible. Even if punitive damages make it to trial, a plaintiff will be required to prove by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others. These new safeguards, however, only apply to cases filed in Missouri state court on or after August 28, 2020.

If confronted with a claim for punitive damages in a case filed after this date, a defendant will want to carefully discuss with counsel all procedural options for defending against punitive damages as well as develop a strategy for presenting evidence in opposition to the more stringent burden of proof and heightened standard of liability a plaintiff will need to meet in order to succeed on a punitive damage claim.

For more information about this law, please contact Thomas Smith.