*The Adelman Advantage*

Punitive Damages – *Lindenberg* and Beyond

On Dec. 27, 2018, the Sixth Circuit Court of Appeals, a federal appellate court, ruled that the current statutory cap on punitive damages in Tennessee is unconstitutional in *Lindenberg v. Jackson Nat’l Life Ins. Co. et al.* The Tennessee statute limits punitive damages to an amount not to exceed the greater of two times the total amount of compensatory damages awarded or $500,000. The Court found that the Tennessee punitive damages statute (Tenn. Code Ann. Section 29-39-104) violates an individual’s right to a trial by jury under the Tennessee Constitution. The Court held that the caps on punitive damages are unconstitutional and unenforceable. The Court relied solely on Tennessee law in making its ruling. This month’s Adelman Advantage offers a primer on punitive damages; an overview of *Lindenberg;* and what may be expected going forward. Because Plaintiffs in Tennessee health care lawsuits against nursing homes, assisted living, nursing homes and physicians include punitive damages claims, it’s important to understand the Court’s opinion. We’ll be reporting timely updates.

**What Are Punitive Damages?** Compensatory damages “compensate the injured party for the injury sustained, and nothing more.” For an easy example, if a nursing home Plaintiff injured her leg due to the negligence of the nursing home staff and had $500 in medical bills, the compensatory award would be $500. Punitive damages are intended to punish the Defendant (not compensate the Plaintiff), and the objective measures that dictate the amount of compensatory awards (i.e. actual medical costs, lost wages, etc.) are, therefore, absent from any punitive damage assessment.

**State Law.** There are several states where punitive damages are not available. In other states, the punitive damages dollar amount is capped or the punitive-to-compensatory ratio is capped. The circumstances triggering punitive damages and their amount are issues within the authority of the judges and juries trying the cases, as well as the appellate courts reviewing those trial court decisions. Tennessee is a “cap” state as noted above, and punitive damages are limited to $500,000 or twice the amount of compensatory damages. There are some exceptions to the cap (fraud, intentional conduct), but those exceptions will not be discussed as part of the *Lindenberg* review.

**State vs. Federal Case Law.** Although several U.S. federal statutes authorize damage awards beyond compensatory damages, punitive damages generally arise from common law tort litigated in state courts. The states’ imposition of punitive damages, however, must be consistent with federal Constitutional principles of due process. The U.S. Supreme Court has given guidance as to circumstances that justify punitive awards, as well as the allowable amount. Although there is no bright-line rule, the Supreme Court’s decisions suggest an upper limit for punitive damages based on a 4:1 punitive-to-compensatory ratio. In cases where compensatory damages were substantial, the ratio should be closer to 1:1.

***Lindenberg* Overview and Damages Award.** *Lindenberg* involved a Memphis jury’s finding of an insurance company’s bad faith refusal to pay pursuant to the terms of a policy of life insurance. Plaintiff’s claims included breach of contract and both statutory and common law bad faith claims. The jury returned a verdict finding that the insurance company breached its contract with Plaintiff, resulting in actual damages of $350,000 (the amount of the life insurance policy) and finding that Defendant’s refusal to pay was in bad faith, resulting in additional damages of $87,500. The jury further found that Defendant’s refusal to pay was either intentional, reckless, malicious or fraudulent and returned a special verdict awarding punitive damages in the amount of $3,000,000.

Prior to the Sixth Circuit’s 2-1 divided opinion, the District Court certified the issue of the constitutionality of caps on punitive damages for appeal to the Tennessee Supreme Court. The Tennessee Supreme Court declined to provide an opinion because the separate issue of whether the Plaintiff was entitled to an award of both statutory bad faith penalties pursuant to Tenn. Code Ann. Sec. 56-7-105 and common law punitive damages was not certified as an issue before the Court. The Tennessee Supreme Court recognized that both issues were issues of first impression and had not previously been decided by the Tennessee Supreme Court. In a footnote to the order declining to issue an opinion, the Tennessee Supreme Court invited the Sixth Circuit Court of Appeals to certify both issues for appeal to the Tennessee Supreme Court, but the Sixth Circuit did not do so and instead, made its own decision to interpret Tennessee law.

***Lindenberg* Court’s Majority Reasoning.** The Court analyzed whether Tenn. Code Ann. Sec. 56-7-105, the statutory remedy for bad faith, is the “exclusive contractual remedy for an insurer’s bad faith refusal to pay on a policy.” The Court found that nothing in the bad faith statute limited the insured’s remedies to the statutory remedies. The Court found that punitive damages, while generally not available in a breach of contract case, might be awarded in certain circumstances, including a bad faith claim. After finding that punitive damages were an appropriate remedy, the Court analyzed the issue of the constitutionality of the statutory caps on punitive damages.

The Court reviewed Tennessee opinions dating back to the 1700’s to analyze the mindset of the makers of the constitution and determine whether the right to punitive damages was included in the right to a trial by jury. Article 1 section 6 of the Tennessee Constitution provides that “the right of trial by jury shall remain inviolate.” The Court referred to North Carolina law at the time of the writing of the Tennessee Constitution for instruction since Tennessee was a part of North Carolina and the Constitution draws heavily from North Carolina. The Court found that North Carolina opinions indicated that North Carolina juries were awarding punitive damages at the time the Tennessee Constitution was drafted and therefore, the right to trial by jury would have included the right to have the jury award punitive damages in appropriate cases. The Court further found that Tennessee law has historically found that an award of punitive damages is a finding of fact within the exclusive province of the jury.

Though the Court relied on North Carolina law to determine whether punitive damages would be included in the right to a trial by jury, the Court did not find North Carolina law instructive when determining whether caps were unconstitutional. North Carolina law permits statutory caps on punitive damages. The Court focused on the differing language between the North Carolina Constitution and the Tennessee Constitution. The North Carolina Constitution protects the right to trial by jury “in all controversies at law respecting property.” The North Carolina courts have therefore found that there was no independent right to or property interest in an award of punitive damages, and the legislature could therefore dictate the jury’s role in making the award. In Tennessee, however, the Constitution’s language is broad, stating that the “right to trial by jury shall remain inviolate.” The Sixth Circuit concluded that the General Assembly’s attempt to cap punitive damages constitutes an unconstitutional invasion of the right to trial by jury. The Court followed the reasoning of a Missouri Court in finding caps on punitive damages unconstitutional because Missouri’s constitutional language mirrors the language in the Tennessee constitution. U.S. Circuit Judge Eric Clay, a Bill Clinton appointee, wrote the majority opinion. U.S. Circuit Judge Jane Branstetter, a Barack Obama appointee, joined Clay in the majority.

***Lindenberg’s* Dissent.** U.S. Circuit Judge Joan Larsen, a Donald Trump appointee, in her 21-page dissenting opinion, faulted the majority for not handing the question of the statute’s constitutionality over to the Tennessee Supreme Court, which is allowed to accept questions about state law from federal judges. As to the constitutionality of the Tennessee Legislature's cap on punitive damages, Judge Larsen interpreted applicable federal law to require that – in order to invalidate the cap – the court find Tennessee's cap on punitive damages unconstitutional "beyond any reasonable doubt." Based on this standard of review, and her interpretation of the available historical evidence and case law, she concluded that "the majority ha[d] not carried its burden" on this issue.

***Lindenberg* Status.** The Court's ruling is that the case will be remanded to the District Court Judge with instructions to recalculate the punitive damages award, presumably with interest, and enter judgment. The story continues as the Defendant has already filed a petition for an *en banc* review by the full 16-member appellate court roster of active circuit judges. Granting these types of petitions is rare, but this case may present the right issues for the Court to accept the petition.

***Lindenberg* and the Future in Tennessee.** The Sixth Circuit’s opinion is not binding precedent on Tennessee state courts, although *Lindenberg*’s majority opinion sets out a roadmap for state court plaintiffs to challenge the constitutionality of the cap of punitive damages. The opinion will be persuasive authority for Tennessee courts, however. If not, the issue will make its way to the Tennessee Supreme Court in the coming year, most likely if a Tennessee trial court uses the Sixth Circuit’s opinion as a basis for ruing the caps are unconstitutional. The Sixth Circuit’s opinion will be binding on cases pending in federal court based on diversity jurisdiction and applying Tennessee law. Therefore, there will be no caps on punitive damages for cases pending in federal court based on diversity jurisdiction and applying Tennessee law. The Sixth Circuit’s opinion will likely affect litigation in multiple areas, including settlement negotiations in cases in which punitive damages are applicable. The opinion could go so far as to impact the constitutionality of the caps on non-economic damages under Tennessee law.

To be continued….

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Rebecca Adelman is an entrepreneur, influencer, thought leader and founder of Adelman Law Firm, established in 2001. For nearly 30 years, Rebecca has concentrated her practice in insurance defense and business litigation. The firm’s practice extends through the Tri-States of Arkansas, Mississippi and Tennessee. Rebecca’s insurance defense practice includes representation of insurance companies and long‐term care providers and their insurers, both regionally and nationally. She also provides consulting services and educational programming to healthcare professionals and business associates. She has active practices in the areas of general liability, professional liability, premises, and employment law. She is a listed mediator serving all areas of business and healthcare litigation. Contact Rebecca at rebecca@adelmanfirm.com and visit www.adelmanfirm.com and www.rebeccaadelman.com.