

PROFESSIONALISM IN PUNITIVE DAMAGE CASES

I. CONSIDERATION OF THE EFFECT ON THE CLIENT FIRST

A. PLAINTIFF

1. GENERAL DAMAGES, i.e., PAIN AND SUFFERING, LOSS OF REPUTATION, ETC., ARE NOT TAXABLE BUT PUNITIVE DAMAGES ARE TAXABLE AS INCOME ; SPECIAL DAMAGES AS LOST ECONOMIC DAMAGES ARE TAXABLE

2. CONTINGENT FEE IS TAXABLE INCOME TO LAWYER WHERE GENERAL DAMAGES OR PUNITIVE.

3. IN SETTLEMENT IT IS BETTER FOR THE CLIENT TO HAVE ALL FOR GENERAL DAMAGES AND NO PUNITIVE.

B. DEFENDANT

1. IN SETTLEMENT HAVE NO PUNITIVE DAMAGES

a. POSSIBLE INSURANCE COVERAGE

b. PUBLIC RELATIONS

c. SHAREHOLDERS

2. TRY TO KNOCK OUT BY SUMMARY JUDGMENT, DIRECTED VERDICT, OR JNOV TO AVOID GOING TO JURY

a. CLEAR AND CONVINCING EVIDENCE

b. OTHER TECHNICAL DEFENSES UNDER THE STATUTE

II. IS THIS CASE AN APPROPRIATE CASE FOR PUNITIVE DAMAGES

PROFESSIONALISM CALLS FOR THE APPROPRIATE ADVICE TO THE CLIENT IN SEEKING PUNITIVE DAMAGES AND IN HOW MUCH TO ASK, BECAUSE THIS MAY DETRACT FROM CASE, CAUSE CREDIBILITY PROBLEMS, OR EXPOSE THE VERDICT TO POST JUDGMENT REMEDIES

A. IS THIS AN INTENTIONAL TORT – IF YES, GO FOR IT.

B. IS THIS A SIMPLE NEGLIGENCE CASE OR ONE THAT INVOLVES REAL "CONSCIOUS INDIFFERENCE TO THE CONSEQUENCES"

1. WHEN YOU SUE SANTA CLAUSE OR MOTHER NATURE FOR PUNITIVE DAMAGES IN A WEAK CASE YOU NEGATIVELY AFFECT THE CREDIBILITY OF THE CASE BY APPEARING TO OVERREACH – A GREEDY SHISTER LAWYER

2. IF THE CASE INVOLVES CONTRIBUTORY NEGLIGENCE, ASSUMPTION OF THE RISK, OR COMPARATIVE NEGLIGENCE IS THE DEFENDANT'S CONDUCT SO OUTRAGEOUS THAT THE JURY WILL GIVE YOU PUNITIVE DAMAGES

3. WHERE THERE IS A TARGET DEFENDANT BUT THE CONDUCT IS NOT OUTRAGEOUS WILL ASKING FOR PUNITIVE DAMAGES HURT THE CASE OR ARE PUNITIVE DAMAGES THE PRIMARY DAMAGES THAT EXIST

4. IF THE GENERAL AND SPECIAL DAMAGES ARE GREAT IS THE CASE SO OUTRAGEOUS THAT THE JURY WILL AWARD PUNITIVE DAMAGES TO PENALIZE, PUNISH, OR DETER THE DEFENDANT FROM SUCH CONDUCT IN THE FUTURE

C. WHAT IS SUFFICIENT PUNITIVE DAMAGES TO PENALIZE, PUNISH, OR DETER FUTURE CONDUCT

1. DO NOT ASK FOR TOO MUCH

a. PROPORTIONALITY OR RATIO IN SPECIAL OR NOMINAL DAMAGE SITUATIONS

b. PERSONAL INJURY THE SKY IS THE LIMIT

c. AMOUNT OF PUNITIVE DAMAGES ESTABLISHES THE INFLAMED PASSION OF THE JURY IN BRINGING AN EXCESSIVE DAMAGE VERDICT

d. VIOLATE STATUTORY CAP MAY GIVE GROUNDS FOR NEW TRIAL, REMITTATURE, OR REVERSAL ON APPEAL

e. AMOUNT OF PUNITIVE DAMAGES THAT WOULD DESTROY
DEFENDANT

2. RIGHT AMOUNT OF PUNITIVE DAMAGES AGAINST THE RIGHT
DEFENDANT

III. CONDUCT OF COUNSEL IN A PUNITIVE DAMAGE CASE

A. WHITE KNIGHT — THE PRIVATE PROSECUTOR

1. MUST APPEAR WITH THE HIGHEST CREDIBILITY

a. DISCLOSE WARTS AND ALL

b. DON'T CUT CORNERS

c. DON'T GET BOGGED DOWN IN NEEDLESS BATTLES BEFORE

JURY

d. USE GOOD COURTROOM CONDUCT

2. JURY MUST IDENTIFY PLAINTIFF'S COUNSEL AS ONE OF THE
"RIGHTOUS" LAWYERS OF THE WORLD

B. MUST DEVELOPE THE RIGHT CASE FOR PUNITIVE DAMAGES

1. DEVELOPE CASE CAREFULLY THROUGH DISCOVERY TO SHOW D'S
CONDUCT WAS OUTRAGEOUS

2. MUST SHOW THAT YOUR CLIENT DIDN'T ASK FOR OR DESERVE THE
TREATMENT

3. MUST SET THE TONE THROUGHT THE TRIAL

a. VOIR DIRE

b. OPENING STATEMENT

c. WITNESSES AND EVIDENCE

d. CLOSING ARGUMENT

e. JURY CHARGES

C. HOW TO LOOK GOOD TO THE JURY

1. BE POLITE AND CONSIDERATE TO OTHERS
2. BE STRONG AND FEARLESS BUT NOT AN AGGRESIVE BULLY
3. DON'T LET THE OTHER SIDE GET YOU TO FLAIRE UP IN ANGER, SAVE YOUR RIGHTOUS INDIGNATION FOR THE CLOSING ARGUMENT
4. BE CONSIDERATE OF THE JURORS
5. BE PREPARED FOR ANYTHING
6. ORGANIZE YOUR CASE TO GO SMOOTHLY
7. DON'T EXAGGERATE

IV PROFESSIONALISM IN THE TRIAL OF A PUNITIVE DAMAGE CASE MEANS TO TRY THE CASE RIGHT, WITHOUT ERRORS, WITH APPROPRIATE RESPONSE, AND APPROPRIATE CONDUCT