

PUBLICATION

U.S. Court of Appeals Declares Tennessee Punitive Damages Cap Unconstitutional | Part 1: The *Lindenberg* Decision

Authors: Buckner Wellford, George T. Lewis, III, Matthew S. Mulqueen

January 14, 2019

In mid-December 2018, a divided panel of the U.S. Court of Appeals for the Sixth Circuit held that Tennessee's statutory cap on punitive damages violates the right to trial by jury under the Tennessee Constitution. The case in question involved the alleged bad faith delay of an insurance company in paying the proceeds of a life insurance policy to the proper beneficiary.

The decision is particularly relevant to insurance companies because it also involved unsettled issues of whether and how such companies can be subjected to both statutory "bad faith" penalties *and* punitive damages. Anyone who may find themselves named as defendants in Tennessee, including corporate entities and individuals doing business in the state, should take note of the decision.

In summary, the Court of Appeals' recent decision creates uncertainty as to the enforceability of Tennessee's statutory punitive damages cap in pending and future cases. Given the non-precedential nature of federal court opinions on state law, litigants in Tennessee state court are likely to engage in vigorous contests over the interpretation and application of the majority's reasoning in pending and future cases.

Businesses and individuals, whether they are engaged in current litigation, should pay attention to what happens next, as this opinion is unlikely to be the last word on the issues addressed and possibly not even the last word on the issues *in this case*.

Introduction

The decision encapsulates important policy debates over whether, and how, the federal appellate courts are being impacted by the large number of federal Circuit Court of Appeals judges appointed during the Trump Administration. The difference in judicial philosophy evident in the 2 to 1 decision is obvious and instructive.

Given the potential impact of this decision not only on Tennessee's legislative punitive damages cap, but also its cap on compensatory damages, our view is that the decision is unlikely to be the last word on these controversial issues. The depth of analysis in the majority opinion and the dissent indicates a desire by each to draw a line in the sand on important policy issues, particularly on the question of how aggressively federal courts will interject themselves into state law issues.

In view of the potential importance of the ruling, we are releasing this alert in multiple parts. This first part focuses on a relatively detailed but instructive review of the facts of the case and the ruling. We will follow up separately with an exploration and analysis of the respectful but stinging 21-page dissent. We will also focus on what is likely to happen next.

The *Lindenberg* Case

In *Lindenberg v. Jackson Nat'l Life Ins. Co.*, a deceased man's former wife sought to compel the payment of proceeds from her ex-husband's life insurance policy, which named her as the primary beneficiary. The "contingent," or back-up, beneficiaries were the policyholder's "surviving children equally." The couple had two minor children, and the decedent also had an adult child from a prior marriage.

The policyholder died on January 22, 2013. On February 6, 2013, his ex-wife, who had been paying premiums on the policy since the couple divorced pursuant to a Marital Dissolution Agreement, filed a claim for the \$350,000 in life insurance proceeds. On March 11, 2013, the claimant, this time acting through an attorney, requested an expedited review of the claim. On March 22, 2013, the insurance company, expressing concern over the issue of whether at least some of the decedent's children may have a claim to the policy proceeds, raised a series of questions to the ex-wife, including a demand that she obtain "waivers to be signed by the other potential parties" and "court-appointed Guardians" for the minor children. The company suggested that another option would be for the claimant to waive her rights under the policy so that the proceeds could be disbursed to the minor children, and also raised the prospect of having to "interplead" the proceeds from the policy into court so that it could obtain a judicial declaration of the appropriate beneficiary or beneficiaries.

The deceased policyholder's ex-wife filed suit in federal court for the company's breach of contract and "bad faith" in processing the claim. Like most states, Tennessee has a law allowing plaintiffs seeking payment of insurance claims to recover damages beyond the policy amounts due if the company is found to have acted in "bad faith." The claimant in *Lindberg* requested a bad faith finding under this statute and also asserted a common law claim under Tennessee law for punitive damages – an award designed not to compensate the plaintiff, but instead to punish fraudulent or otherwise reprehensible action by a defendant.

The insurance company filed a response to the complaint that included a formal request for permission to interplead the policy proceeds. The U.S. district court judge presiding over the case dismissed the interpleader claim, relying in part on submissions from court-appointed guardians ad litem protecting the interests of the two minor children, as well as a separate motion to dismiss the interpleader request by the adult child from the decedent's previous marriage. The judge ordered the company to pay the policy proceeds with interest to the plaintiff's ex-wife; however, he did not dismiss the lawsuit, but allowed the bad faith and punitive damages claims of the ex-wife against the insurance company to proceed to a jury trial.

The evidence presented to the jury included testimony from experts engaged by the plaintiff who opined that the company's conduct appeared designed to prolong and complicate the claims process. The court of appeals decision focused in particular on evidence that the company lacked policies or procedures "to guide Plaintiff's claim to resolution without litigation" and had no "systems to prevent its personnel from making false and unsupported assertions of law [apparently concerning the claimant's alleged waiver of her right to recover]." The court's recitation of the facts states that "[t]he jury learned that when Plaintiff complained about the cost and confusion of Defendant's seemingly unjustified threat of an interpleader action, Defendant told her 'that is not our problem.'" Finally, the court noted that the "Defendant" acknowledged to the jury that its staff was merely dedicated to "closing Plaintiff's complaints."

Following a week-long trial, the federal court jury returned a verdict finding that (1) the defendant breached its contract with its policyholder by not paying policy proceeds to the plaintiff, resulting in actual damages of \$350,000; (2) the defendant refused to process the claim in a timely manner, which constituted bad faith, resulting in additional statutory damages of \$87,500; and (3) the defendant's refusal to pay was intentional, reckless, malicious, or fraudulent, thus justifying punitive damages. The jury then returned a special verdict awarding punitive damages of \$3,000,000, almost nine times the amount of compensatory damages.

Following the verdict, the defendant filed a motion with the district court to set the verdict aside. It also moved in the alternative to reduce or eliminate entirely the amount of punitive damages, the reduction argument relying on the statutory cap imposed for punitive damages by the Tennessee Legislature. In response, the plaintiff argued that the statutory cap violated the Tennessee Constitution, and that Tennessee law did allow for the recovery of both bad faith and punitive damages. (The defendant had previously moved to dismiss the plaintiff's claim for punitive damages entirely under the "elimination" argument, claiming that Tennessee law

does not permit recovery of *both* a statutory bad faith and a common law punitive damages award. The district court rejected that argument).

The Court of Appeals Finds the Statutory Damages Cap Unconstitutional

The case was assigned to a panel of three judges with stellar academic and judicial backgrounds: Circuit Judges Eric L. Clay, Jane B. Stranch, and a 2017 appointee to the federal circuit court, former Michigan Supreme Court Justice Joan L. Larsen. In a key threshold decision, also resulting in a 2-1 vote, the panel (Clay and Stranch in the majority) declined to accept what Judge Larsen called an "invitation" by the Tennessee Supreme Court to resolve through a "certification" process to the Tennessee Supreme Court the state law issues of whether a punitive damage award could stand at all if a bad faith finding had already been made and whether the legislative cap on punitive damages was constitutional.

Instead, in an opinion authored by Judge Clay and joined by Judge Stranch, the majority resolved those issues itself, finding that a previously decided Sixth Circuit case addressing the issue of whether punitive damages could be awarded in addition to a bad faith penalty misread Tennessee law on the subject. The correct answer to that question, in the view of the majority, was that the Tennessee Supreme Court would find (in the majority's view, that the court had implicitly already found) that both forms of damages were allowable. The majority then addressed the constitutional viability of the punitive damage cap – once again putting itself in the position of opining on what the Tennessee Supreme Court would likely do if deciding the issue – and concluded that the cap on punitive damages promulgated by the Tennessee legislature violated the right to jury trial guaranteed by the Tennessee Constitution.

Judge Clay's majority opinion reviewed historical records and cases from Tennessee and North Carolina indicating, in the opinion of Judges Clay and Stranch, that punitive damages awards were part of the right to trial by jury at the time the Tennessee Constitution was adopted. (Tennessee was originally part of North Carolina, and Tennessee's Constitution and case law draw heavily from North Carolina). Based on this review – including a line of cases addressing the measure of punitive damages as a "finding of fact" within the exclusive province of the jury – the majority concluded that the caps provision set forth in Tennessee Code Annotated Section 29-39-104 violates the right to trial by jury under Article I, Section 6 of the Tennessee Constitution.

The State of Tennessee, as intervenor, filed an appellate brief siding with the defendant and making at least six separate arguments in favor of the constitutionality of the caps legislation. The majority rejected each of those arguments, finding insufficient support for them in existing Tennessee case law or that Tennessee law affirmatively resolved the issues against the position advanced by the defendant and the State.

So What's Next?

As matters now stand, the dissenting opinion won't have an impact on the panel's holding. 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.

We do not believe, however, that this is the end of the story. The defendant has already filed a petition for an *en banc* review by the full 16-member appellate court roster of active circuit judges. Given the nature of the issues involved, if the case is granted an *en banc* review, it seems quite possible that the full court will move in a different direction, including certifying the key state law issues to the Tennessee Supreme Court for decision, as advocated for by the dissenting judge. [We will explain this further in our next alert.](#)

For more information about the *Lindenberg* decision and its impact on litigation in Tennessee, please contact [Buck Wellford](#), [Buck Lewis](#), [Matt Mulqueen](#), or any of the members of Baker Donelson's [Litigation Group](#).

