

INDIANA SUPREME COURT HOLDS PUNITIVE DAMAGE STATUTE CONSTITUTIONAL

On May 14, 2013, the Indiana Supreme Court issued a 5-0 opinion authored by Justice Mark Massa in *State v. Doe*, 2013 WL 1975865 (Ind.,2013) reversing the trial court's denial of the Defendant's motion to reduce a punitive award pursuant to the statutory cap. The Court held: the statutory cap on punitive damages that may be awarded in a civil action did not violate right to jury trial set forth in State Constitution; the statutory provision governing the allocation of punitive damages in a civil action did not violate right to jury trial set forth in State Constitution; the statutory cap on punitive damages that may be awarded in a civil action did not violate separation of powers doctrine set forth in State Constitution; and neither the statutory cap on punitive damages that may be awarded in a civil action nor statutory provision governing the allocation of punitive damages in a civil action constituted a "legislative remittitur" that violated separation of powers provision of State Constitution

Facts of case: In *Doe*, a jury awarded the plaintiff \$150,000 in punitive damages. The Defendant moved to reduce the damages pursuant to the statutory cap of three times the compensatory damages or \$50,000 whichever is greater (I.C. § 34-51-3-4). The trial court denied the reduction finding that the cap on punitive damages violated the Indiana constitution, specifically Article 3, Section 1 (separation of governmental powers) and Article 1, Section 20 (right to jury trial.). The State intervened in the case to protect its interest in the punitive damages award while the Plaintiff argued that the allocation provision was unconstitutional as applied to him. The Plaintiff's original arguments were based on the state and federal Takings Clauses but he later raised separation of powers and jury trial arguments.

On September 27, 2011, more than 2 years after the verdict and without holding a hearing on Doe's constitutional claims or allowing the State to respond to his late-raised arguments, the trial court issued an order declaring both cap and allocation violated the separation of powers and right to jury trial. The State moved to correct error, seeking an opportunity to demonstrate the statutes comport with those constitutional provisions, but the trial court denied that motion. The Indiana Supreme Court took mandatory and exclusive jurisdiction over this appeal under Ind. App. Rule. 4(1)(b).

The Court's analysis: The Supreme Court noted that, while the constitutionality of the cap on punitive damages was unique, the analysis of the constitutionality of the caps on compensatory damages is not. In *Johnson v. St. Vincent Hosp., Inc.*, 273 Ind. 374, 404 N.E.2d 585 (1980), the Indiana Supreme Court held that the compensatory damages in medical malpractice cases was Constitutional, stating "there is no indication...that the right to have a jury assess the damages in a case properly tried by jury constitutes a limitation upon the authority of the Legislature to set limits upon damages."

In evaluating Doe's argument that the cap and allocation provision infringed upon his right for a jury trial, the Indiana Supreme Court agreed that that Indiana courts had previously held that the jury's determination of the amount of punitive damages is not the sort of "finding of fact" that implicates the right to jury trial under our state constitution. *Stroud v. Lints*, 790 N.E.2d 440, 445 (Ind.2003). The Court concluded that the allocation of punitive damages is similarly not a "finding of fact" for constitutional purposes and found that the cap and allocation provisions are fully consonant with the right to jury trial protected by Article 1, Section 20.

The Supreme Court also rejected Doe's separation of powers argument, finding that the punitive damage cap is a "public policy judgment that punitive damages in civil cases should not exceed a certain amount." The Court compared the cap on punitive damages to the maximum statutory sentences that are set for criminal matters. If an offender is convicted of child molesting, the court has absolute discretion to set the offender's punishment as long as the punishment falls within the statutorily mandated range of two to eight years. In the issue of punitive damages, the legislature imposed a cap on the amount of punitive damages that a jury may award and that 75% of those damages would be allocated to the Victim's Compensation Fund. The Court held that, while the trial court had discretion to award punitive damages, the award must fit within those statutory parameters and Article 3, Section 1 of the Indiana Constitution demands nothing more.

Finally, the court noted such statutory limitations were not a legislative remittitur as:

The cap is not a remittitur, as it does not require a plaintiff to choose between a reduced damages award and a new trial, nor does it depend upon the presence of some error in need of correction. Nor is the allocation provision a remittitur; it does not change the amount of the

damage award at all. Rather, both cap and allocation delineate a boundary within which the court may exercise its discretion to award damages, order remittitur, or otherwise modify the judgment as appropriate in light of the evidence and circumstances of the particular case before it. That boundary is within the legislature's power to set, and the exercise of that power does not offend Article 3, Section 1 of our Indiana Constitution.

Impact on Future Cases: The above case affects the current push by Plaintiffs to argue that the cap on the compensatory damages under the Indiana Medical Malpractice Act is unconstitutional. In March, 2013, in *Plank vs. Community Hospital*, the Indiana Supreme Court affirmed the trial court's denial of Plank's request for an evidentiary hearing to challenge the constitutionality of the Medical Malpractice Act concluding that Plank had forfeited his opportunity to conduct such a hearing. However, the Supreme Court acknowledged that the constitutionality of the cap on damages could be revisited on a case-by-case basis. Now, in *Doe*, the Supreme Court unequivocally upheld the cap on damages under the Medical Malpractice Act while upholding a challenge to the punitive damage cap under the separation of powers argument. The Court's adherence to precedent and reasoning is important as the *Doe* Court relied largely on the court's previous validation of the medical malpractice damages cap in *Johnson*. Therefore, it is anticipated that future arguments based upon separation of powers will be rejected.

However, Plank had also argued that the Medical Malpractice Act cap on damages violated the Privileges and Immunities Clause (Article I, Section 23) and the takings clause (Article I, Section 21) of the Indiana Constitution. Therefore, defense counsel should continue to be prepared for continuing challenges to the constitutionality of the cap.

Should you have any questions, please contact your regular Hall Render attorney.