Torts; limitations on punitive damages

The University of the Pacific, McGeorge School of Law

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Torts

Torts; joint and several liability—concerted acts of defendants

NEV. REV. STAT. § 41.141 (amended).
AB 249 (Committee on Judiciary); 1989 STAT. Ch. 39

Under existing law, where a judgment is imposed against multiple defendants in an action where comparative negligence is asserted as a defense, each defendant’s several liability is limited to the part of the judgment corresponding to the defendant’s percentage of negligence. The joint and several liability of defendants is not affected, however, in actions based upon the concerted acts of the defendants. Chapter 39 specifies that the term “concerted acts of defendants” does not encompass negligent acts of health care providers that occur while jointly treating a patient.

LRM

1. See NEV. REV. STAT. § 41.141 3 (1988) (if one of the defendants settles with the plaintiff before a judgment is entered, the comparative negligence and settlement amount may not be admitted into evidence, and the judge must reduce the net sum of the plaintiff’s verdict by the amount of the settlement).
2. See id. § 41.141 (1988) (amended by 1989 Nev. Stat. ch. 39, sec. 1, at 72) (a plaintiff’s comparative negligence does not bar his recovery if it was not more than the negligence of the defendant or the combined negligence of multiple defendants).
3. Id.
4. Id. (joint and several liability is not affected in actions based upon strict liability, intentional torts, disposal of hazardous substances, or products liability).
5. See id. § 629.031 (1987) (definition of health care provider).

Torts; limitations on punitive damages

NEV. REV. STAT. § 42._ (new); §§ 41.100, 42.010 (amended).
AB 307 (Committee on Judiciary); 1989 STAT. Ch. 218

Exiting law allows the trier of fact in tort cases to award punitive damages if the defendant has committed fraud, oppression, or malice. Under Chapter 218, the plaintiff must establish a right to

punitive damages under a clear and convincing standard except in cases involving driving under the influence.

Chapter 218 limits the maximum amount of punitive damages available in all tort claims except those involving injuries caused by intoxicated drivers, defective products, bad faith by an insurer, discrimination in housing, mishandling of hazardous waste, or defamation. In tort actions other than those listed above, Chapter 218 limits the maximum amount of punitive damages available in all tort claims except those involving injuries caused by intoxicated drivers, defective products, bad faith by an insurer, discrimination in housing, mishandling of hazardous waste, or defamation. In tort actions other than those listed above, Chapter


218 limits punitive damages to three times compensatory damages or $300,000, whichever is higher. 10

Under Chapter 218, a separate proceeding must be held to introduce evidence to aid the jury in determining the amount of punitive damages. 11 The defendant's financial condition may not be introduced into evidence until this separate proceeding. 12 Additionally, the jury may not be informed of the limitations imposed by Chapter 218. 13

**COMMENT**

Despite numerous challenges, the United States Supreme Court has refused to rule that punitive damages are per se unconstitutional. 14 Under existing law, methods of guarding against excessive awards are available, including new trial orders, 15 remittitur, 16 and appellate review of damages. 17

Because punitive damages are intended to punish or make an example of the defendant, not to compensate the plaintiff, 18 Nevada allows the introduction of the defendant's financial position when punitive damages are to be awarded. 19 Since a higher amount of damages is required to punish a wealthy defendant, 20 the cap on


12. Id.

13. Id.


15. See Nev. R. Civ. P. 59(a)(6) (1987) (new trial appropriate if award is excessive and based on passion or prejudice).


20. Summa Corp. v. Greenspun, 98 Nev. 528, 536, 653 P.2d 513, 514 (1982) (punitive damage award of $1,000,000 was "not large, let alone excessive" given defendant's net worth adduced at trial); Hale v. Riverboat Casino, 100 Nev. 299, 307, 682 P.2d 190, 195 (1984)
punitive damages imposed by Chapter 218 may impair the fact-finder’s ability to adequately punish wealthy private or corporate defendants.\textsuperscript{21}

\textit{JZ}

(punitive damages award amounting to less than 1.5\% of defendant’s annual net profit was neither “large nor excessive”).
