



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1989 | Issue 1

Article 150

1-1-1989

Torts; limitations on punitive damages

The University of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

The University of the Pacific, McGeorge School of Law, *Torts; limitations on punitive damages*, 1989 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1989/iss1/150>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

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 defendants¹ in an action where comparative negligence² 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.³ The joint and several liability of defendants is not affected, however, in actions based upon the concerted acts of the defendants.⁴ Chapter 39 specifies that the term "concerted acts of defendants" does not encompass negligent acts of health care providers⁵ that occur while jointly treating a patient.⁶

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).

6. 1989 Nev. Stat. ch. 39, sec. 1, at 72 (amending NEV. REV. STAT. § 41.141).

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.¹ Under Chapter 218, the plaintiff must establish a right to

1. NEV. REV. STAT. § 42.010 (1988) (amended by 1989 Nev. Stat. ch. 218, sec. 3, at 487). Many jurisdictions do not require express fraud, oppression, or malice, but allow punitive

punitive damages under a clear and convincing² standard³ except in cases involving driving under the influence.⁴

Chapter 218 limits the maximum amount of punitive damages available in all tort claims except those involving injuries caused by intoxicated drivers, defective products,⁵ bad faith by an insurer,⁶ discrimination in housing,⁷ mishandling of hazardous waste,⁸ or defamation.⁹ In tort actions other than those listed above, Chapter

damages upon a showing of extreme recklessness or disregard for public safety. *Compare id.* with ALA. CODE § 6-11-20 (Supp. 1984); CAL. CIV. CODE § 3294 (West Supp. 1989); MASS. GEN. LAWS ANN. ch. 229, § 2 (West 1985); MINN. STAT. § 549.20 (West 1988); S.D. CODIFIED LAWS ANN. § 21-3-2 (1987); TEX. CIV. PRAC. & REM. CODE ANN. § 41.001 (Vernon Supp. 1989); VA. CODE ANN. § 8.01-52 (1984). See generally Note, Tuttle v. Raymond, *An Excessive Restriction Upon Punitive Damage Awards in Motor Vehicle Tort Cases Involving Reckless Conduct*, 48 OHIO ST. L.J. 551 (1987) (discussion of clear and convincing standard in jurisdictions with a recklessness standard).

2. There is no definition given for "clear and convincing." 1989 Nev. Stat. ch. 218, at 485. *But cf.* ALA. CODE § 6-11-20 (Supp. 1988) (clear and convincing evidence is evidence which will produce a firm conviction as to every element of the cause of action).

3. 1989 Nev. Stat. ch. 218, sec. 2, at 486 (enacting NEV. REV. STAT. § 42.____ 1). Other states have statutorily or judicially imposed a clear and convincing standard for punitive damages. See, e.g., ALA. CODE § 6-11-20 (Supp. 1988); ALASKA STAT. § 09.17.020 (1988); CAL. CIV. CODE § 3294 (West Supp. 1989); IND. CODE ANN. § 34-4-34-2 (Michie 1987); MINN. STAT. § 549.20 (West 1988), OR. REV. STAT. § 41.315 (1987); Linticum v. Nationwide Life Ins. Co., 150 Ariz. 326, 332, 723 P.2d 675, 681 (1986); Tuttle v. Raymond, 494 A.2d 1353, 1363 (Me. 1985); Wagen v. Ford Motor Co., 97 Wis. 2d 260, 300, 294 N.W.2d 437, 458 (1980). *But see* COLO. REV. STAT. § 13-25-127(2) (1987) (punitive damages must be proven beyond a reasonable doubt).

4. 1989 Nev. Stat. ch. 218, sec. 3, at 487 (amending NEV. REV. STAT. § 42.010).

5. See generally *Houston Exploration Inc. v. Meredith*, 102 Nev. 510, 728 P.2d 437; *Jeep Corp. v. Murray*, 101 Nev. 640, 708 P.2d 297 (1985); *Leslie v. Jones Chemical Co., Inc.*, 92 Nev. 391, 551 P.2d 234 (1976) (cases concerning the issue of punitive damages in product liability causes of action).

6. See NEV. REV. STAT. §§ 687B.385-.410 (1987) (examples of insurer misconduct). See generally *U.S. Fidelity & Guaranty Co. v. Peterson*, 91 Nev. 617, 620, 540 P.2d 1070, 1072 (1975) (assessment of punitive damages for insurer's bad faith); Kornblum, *The Current State of Bad Faith and Punitive Damage Litigation in the U.S.*, 23 TORT AND INS. L.J. 812 (1988).

7. See NEV. REV. STAT. §§ 118.010-.120 (1987); 42 U.S.C. §§ 1982 (1982), 3601-3631 (1982) (housing discrimination statutes).

8. See NEV. REV. STAT. §§ 459.430 (1987) (definition of hazardous waste), 459.010 (1987) (definition of radioactive waste). See generally *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 258 (1984) (punitive damages in nuclear waste tort).

9. 1989 Nev. Stat. ch. 218, sec. 2, at 486 (enacting NEV. REV. STAT. § 42.____); sec. 3, at 487 (amending NEV. REV. STAT. § 42.010). Existing law allows punitive damages for libel actions when the plaintiff has demanded a correction from the defendant, and the defendant has either failed to provide a correction within 20 days or has acted with actual malice. NEV. REV. STAT. §§ 41.336-.337 (1987). See also *id.* § 41.332 (1987) (definition of actual malice). The U.S. Supreme Court has held that the Constitution does not require the states to impose an actual malice requirement for punitive damages in defamation cases, so long as the plaintiff is a private individual and the controversy is not a public concern. *Dun & Bradstreet, Inc. v. Greenmoss Builders Inc.*, 472 U.S. 749, 761 (1985). See generally *Nevada Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 664 P.2d. 337 (1983); *Summa Corp. v. Greenspun*, 98 Nev. 528, 655 P.2d 513 (1982) (assessment of punitive damages in defamation cases); Note, *Private Individual May Recover Presumed and Punitive Damages Without a Showing of Actual Malice*, 16 SETON HALL L. REV. 785 (1986).

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

10. 1989 Nev. Stat. ch. 218, sec. 2, at 486 (enacting NEV. REV. STAT. § 42.____). Cf. FLA. STAT. ANN. § 768.73 (West Supp. 1989) (award of more than three times compensatory damages creates a rebuttable presumption that the award is excessive); VA. CODE ANN. § 8.01-38.1 (Supp. 1988) (punitive damages must not exceed \$350,000). See generally Wheeler, *The Constitutional Case for Reforming Punitive Damages Procedures*, 69 VA. L. REV. 269 (1983); Sales, *Punitive Damages: A Relic That Has Outlived Its Origins*, 37 VAND. L. REV. 1117 (1984).

11. 1989 Nev. Stat. ch. 218, sec. 2, at 486 (enacting NEV. REV. STAT. § 42.____).

12. *Id.*

13. *Id.*

14. *E.g.*, *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, ___ U.S. ___, 57 U.S.L.W. 4985, 4987 (1989) (the Eighth Amendment does not apply to civil cases). Constitutional challenges are usually based upon the Eighth Amendment. See generally Wheeler, *supra* note 10.

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

16. See NEV. R. APP. P. 41(a) (1987) (procedure for remittitur).

17. See NEV. R. APP. P. 3A (1988) (procedure for civil appeal). See generally *Ace Truck v. Kahn*, 103 Nev. 503, 509, 746 P.2d 132, 136-37 (1987) (standards for appellate review of punitive damages).

18. See 1989 Nev. Stat. ch. 218, sec. 2, at 486 (enacting NEV. REV. STAT. § 42.____); sec. 3, at ___ (amending NEV. REV. STAT. § 42.010) (purpose of punitive damages). See generally DOBBS, *HANDBOOK ON THE LAW OF REMEDIES* at 205 (1973) (most jurisdictions do not view punitive damages as compensatory).

19. 1989 Nev. Stat. ch. 218, sec. 2, at ___ (enacting NEV. REV. STAT. § 42.____) (jury may hear evidence of defendant's financial position for the purpose of assessing punitive damages).

20. *Summa Corp. v. Greenspun*, 98 Nev. 528, 536, 655 P.2d 513, 517 (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.²¹

JZ

(punitive damages award amounting to less than 1.5% of defendant's annual net profit was neither "large nor excessive").

21. Dobbs, *supra* note 18, at 210-11. Cf. KAN. STAT. ANN. §60-3701 (1988) (punitive damages award is limited to 25% of the defendant's annual income, not to exceed \$5,000,000).

