

Tennessee Litigation Update

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Sixth Circuit Holds Tennessee Cap on Punitive Damages to be Unconstitutional

On December 21, 2018 the Sixth Circuit Court of Appeals released its opinion in *Lindenberg v. Jackson National Life Insurance Company*, which held Tennessee's punitive damage cap to be unconstitutional under the Tennessee Constitution. The case originated in the US District Court for the Western District of Tennessee and concerned the payment of benefits under a life insurance policy, including whether benefits were owned under the policy, whether bad faith benefits were appropriate and whether punitive damages were appropriate.

At trial, the jury found that the insurance company had breached its contract, that the refusal to pay was in bad faith and the refusal to pay was either intentional, reckless, malicious or fraudulent. As such, the jury awarded actual damages of \$350,000.00, bad faith damages of \$87,500.00 and punitive damages of \$3,000,000.00.

The Defendant asked the District Court to apply the Tennessee punitive damages cap to the jury's verdict, which would reduce the punitive damages award to the greater of \$500,000.00 or two times compensatory damages. The Plaintiff argued against imposition of the statutory cap and asserted that the cap violated the Tennessee Constitution. In response, the District Court certified the question of the cap's constitutionality to the Tennessee Supreme Court. When the Tennessee Supreme Court declined to rule on the constitutionality of the cap, the District Court applied the cap and reduced the punitive damage award to \$700,000.00.

On appeal, the Sixth Circuit first held that the Plaintiff was entitled to separate damages for bad faith and punitive damages, distinguishing other recent Sixth Circuit precedent on this issue. The Sixth Circuit then turned to the constitutionality of the punitive damage cap found at Tennessee Code Annotated § 29-39-104. The Sixth Circuit noted that Tennessee Courts had not addressed the issue and therefore it attempted to "predict" how the Tennessee Supreme Court would rule, if presented with the issue.

In making this prediction, the Sixth Circuit carefully examined some of the earliest cases in Tennessee and even cases from North Carolina, of which Tennessee was a part before becoming a separate state. Through this analytical process, the Sixth Circuit determined that the punitive damage cap violates the individual right to a jury trial found in the Tennessee Constitution. Accordingly, the Sixth Circuit remanded the case back to the District Court with instructions to calculate the proper award without capping the punitive damages under Tennessee Code Annotated § 29-39-104.

The Sixth Circuit declined, however, to address the Plaintiff's alternate argument that the punitive damage cap violates separation of powers under the Tennessee Constitution. Further, the Court did not examine or discuss the issue of whether the punitive damage cap violates the United States Constitution. These two issues remain open questions after *Lindenberg*.

Finally, it should be noted that the decision was a 2-1 decision on the issue of whether punitive damages were available in addition to bad faith damages, and in regard to whether the punitive damage cap was unconstitutional. The dissent also favored having the Sixth Circuit certify the constitutional issue, again, to the Tennessee Supreme Court to allow it to resolve this unsettled area of state law.

Going forward, the *Lindenberg* opinion will certainly generate additional litigation related to Tennessee's Civil Justice Act and the punitive and noneconomic damage caps the Act imposed. Indeed, although the opinion does not directly implicate the noneconomic damage cap, it is virtually certain that the opinion will be used to attack the constitutionality of the noneconomic damage caps in state and federal court, as many of the same arguments can be made against the noneconomic damage caps that were made against the punitive damage caps.

While the *Lindenberg* opinion is only persuasive authority in state court, meaning state courts can disregard the logic of the opinion if they disagree, it is binding precedent in the Sixth Circuit. As a result, careful consideration should be given to removing cases from state court to federal court if punitive damages are plead in the Complaint, or if there is a likelihood that they might become an issue in the litigation. If they are an issue, removal to federal court, after *Lindenberg*, would mean moving the case to a jurisdiction with uncapped punitive damages.

For more information, please contact one of MGC's Tennessee litigation [attorneys](#).

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