



## **Appealing An Excessive Punitive Damages Award:**

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Large punitive damages verdicts by nature warrant careful analysis. They frequently implicate constitutional scrutiny under the Due Process Clause of the Fourteenth Amendment. Therefore, state courts, including Kentucky, have of necessity incorporated the United States Supreme Court's jurisprudence on the issue of when a punitive damages award is so grossly excessive as to violate a party's due process rights. When a jury returns such an impermissible verdict, the trial court may order a new trial under CR 59.01 on the issue of damages. The court may also entertain a CR 59.05 motion to alter, amend or vacate a judgment.

The appellate standard for reviewing punitive damages awards also differs from the standard for reviewing compensatory damages. Compensatory damages are reviewed for an abuse of discretion. Appellate courts, however, review constitutional challenges to the amount of a punitive damages award *de novo*. *Ragland v. DiGiuro*, 352 S.W.3d 908, (Ky. App. 2010).

The Kentucky Court of Appeals in *Ragland v. DiGiuro* recounts part of the United States Supreme Court's rationale for this distinction between the standard of review for compensatory and punitive damages:

The Supreme Court reasoned that, "unlike the measure of actual damages suffered, which presents a question of historical or predictive fact, ... the level of punitive damages is not really a 'fact' 'tried' by the jury." Historically, as the function of exemplary damages became less compensatory and more punitive and deterrent, and as the analysis shifted from fact-based to law-based, the States' interests in punishment and deterrence came to play the greater role. ... For these and other reasons, constitutional challenges to punitive damage awards are reviewed *de novo*.

*Ragland v. DiGiuro*, 352 S.W.3d at 917-918, (quoting *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678, 1685-86 149 L.Ed.2d 674 (2001)) (internal citations omitted).

Kentucky has likewise adopted the Supreme Court's substantive standard for review of punitive damages awards. *Id.* That standard includes the consideration of three guideposts:

(1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

*Id.* (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418, 123 S.Ct. 1513, 1520, 155 L.Ed.2d 585 (2003) and *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 116 S.Ct. 1589, 1599, 134 L.Ed.2d 809 (1996)).

Generally, a punitive damages award with a ratio equal to or greater than 10-1 when compared to compensatory damages almost certainly violates the Due Process Clause. *State Farm*, 538 U.S. at 425, 123 S.Ct. at 1513. Otherwise, the Supreme Court holds that the most important guidepost when considering the propriety of a punitive damages award is the first—the reprehensibility of the defendant’s conduct. *Gore*, 517 U.S. at 575, 116 S.Ct. at 1599.

In conclusion, CR 59.01(d) enables a court to order a new trial for an award of excessive damages. Note, however, that when challenging the constitutionality of an excessive punitive damages award, the challenge is properly brought under CR 59.05, “since it is a challenge to the amount of damages in light of due process requirements rather than a challenge to the sufficiency of the evidence.” *Steel Technologies, Inc. v. Congleton*, 234 S.W.3d 920, 930 (Ky. 2007). The best practice will be to appeal an excessive award of damages under both CR 59.01 and 59.05.

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