

## ALL EYES ON MISSOURI'S PUNITIVE DAMAGES CAP

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The Missouri Supreme Court may soon decide the fate of Missouri's punitive damages cap, § 510.265 RSMo. On November 2, 2011, the Court heard oral arguments in *Overbeys v. Franklin*, SC91369, wherein the Overbeys contend that a \$1 million dollar punitive award against individual Chad Franklin, which was decreased to \$500,000.00 pursuant to the cap, should be reinstated because the statute is unconstitutional.

### ***Background***

On August 12, 2010, a Clay County jury handed down a punitive damages award of \$1 million dollars against Chad Franklin, previous owner of Chad Franklin National Auto Sales North, LLC. The Overbeys attained a jury verdict based on the Missouri Merchandising Practices Act ("MMPA"). The Overbeys alleged that defendants Chad Franklin and National Auto Sales misled them to enter into an agreement to buy a 2007 Suzuki for \$45 a month for 6 months, instead of paying the non-discounted \$719 a month car payment. When they purchased the vehicle, the plaintiffs were given a check from the dealership to make up the difference. Supposedly, at the end of the 6 months plaintiffs could trade in the Suzuki for another vehicle with the same \$45 a month payment. When the Overbeys returned at the end of the 6 months all of the National Sales Auto personnel that assisted them were no longer with the dealership, and the dealership, including Franklin, denied any knowledge of the "deal." The Overbeys were stuck with a \$719 a month car payment with an interest rate of 11.24%.

Consequently, the Plaintiffs sued both National Auto Sales and Chad Franklin, with only the MMPA claims going to trial. After a four day jury trial, the jury returned a verdict in favor of the plaintiffs against National Auto Sales for \$76,000 actual damages, and \$250,000 punitive damages (a 3.289:1 ratio), and against Chad Franklin for \$4,500 actual damages, and \$1 million punitive damages (a 111:1 ratio). After various post-trial motions, the Judge ordered that "[t]he jury's verdict award of One Million Dollars (\$1,000,000.00) punitive damages is reduced by the Court to the statutory maximum of Five Hundred Thousand (\$500,000.00) as set forth in Section 510.265 RSMo." Both parties appealed.

### ***The Cross Appeals***

The Plaintiffs contend that § 510.265 is unconstitutional and that the \$1 million punitive award should be reinstated. They argue that the cap violates 1) the constitutional separation of powers; 2) the Overbeys' right to trial by jury; 3) the Overbeys' right to equal protection; 4) the prohibition against special legislation; 5) the due process clause; and 6) the Overbeys' right to open courts, an issue brought up the first time on appeal. In

the alternative, the Overbeys contend that if the cap is found to be constitutional, they were merely acting as “private attorney generals” in bringing their MMPA claim, and thus should fall under the State exception of § 510.265. The Overbeys filed their appeal with the Supreme Court.

Franklin contends that the trial court’s failure to reduce the punitive damages amount to a single-digit multiple of Franklin’s actual damages violates the due process provisions of the United States and Missouri Constitutions. Franklin also appeals the finding of MMPA liability against Franklin, and the amount of the attorneys’ fees awarded by the court. Although Franklin originally filed his cross-appeal in the Western District of the Missouri Court of Appeals, the appeal was transferred to the Missouri Supreme Court upon the Overbeys’ motion that the Supreme Court holds exclusive jurisdiction since the Overbeys challenge the constitutionality of a Missouri statute.

### ***Oral Argument***

The oral argument principally focused on whether § 510.265 violates the separation of powers doctrine and the Overbeys’ right to a jury trial. Plaintiffs’ counsel argued that the statute usurped the judiciary’s power by permitting the legislature to enact a procedural statute that contravened the constitution by depriving a plaintiff his/her right to a jury trial. The parties’ arguments also focused on the fact that the actual damages awarded stemmed from a legislatively created cause of action, the MMPA, and that the cap was also legislatively created. When considering the “check and balances” issue, members of the Court inquired about what would take place in the future if, without a statutory cap, the Court approved a very high punitive damages award. Which branch would be the check on the judiciary? In response, the Plaintiffs’ counsel offered only the constitutional due process constraints referenced in the Supreme Court’s *State Farm* and *BMW* cases. As the statute stands now, Plaintiff’s counsel argued that it deprives a defendant from making such an argument that the judiciary is constrained by the *State Farm* and *BMW* due process test.

Although Franklin’s counsel focused on what he proclaimed was the “slim evidence” presented at trial that Franklin individually violated the MMPA, the Court refrained from asking too many liability questions. Rather, the Court focused on the legislature’s seeming attempt, whether right or wrong, to provide a due process test for determining the appropriate amount of punitive damages in any given case. The Court appeared to question such logic by inquiring of defense counsel: what would happen if the legislature made the multiplier 20 instead of 5; what if the legislature offered certain ratios for certain classes of plaintiffs; and whether the legislature could require some type of basement, instead of a ratio ceiling, for punitive damages. Regarding what types of ratios are permissible, the Court reminded counsel that prior cases involving relatively low actual damage awards have resulted in large punitive awards, and these awards served as a clear communication from the jury to the defendant that defendants’ conduct should not be condoned but punished. Franklin’s counsel contended that such cases were

either prior to *State Farm* ruling, or involved more reprehensibility sub factors that would support such a finding, which he argued were lacking in this case.

***The Stage is Set—But the Tea Leaves are Opaque***

Accordingly, the Missouri Supreme Court has an interesting opportunity to decide the fate of the Missouri statutory punitive damages cap. The oral argument offered intelligent and balanced questions from the Court, which did not suggest any clear consensus or direction on the outcome. Of course, the Court has many options.

- It could decide to avoid the constitutional punitive damages issue altogether and merely find that Franklin is not liable under the MMPA.
- It could affirm the trial court's rulings and reduced award under the cap.
- Alternatively, it could find that any one of the seven constitutional arguments presented by Plaintiffs should prevail.
- Or, again avoiding the constitutional question, the court could order the trial court to consider further reduction of the punitive award under a *State Farm* analysis.

However, at the end of the day, the broad and ultimate question in front of the Court appears to be whether a low actual damage award against a defendant could ever, statutory cap or not, support a large punitive award even considering the reprehensibility of the defendant's conduct.

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