CHAPTER 33

Verdicts

**SECTION 15‑33‑125.** Limitations on granting of new trial.

 A new trial may be granted to the plaintiff on the issue of damages only and not liability when the only reasonable inference to be drawn from all the evidence, viewed in the light most favorable to the defendant, is that the plaintiff is entitled to a verdict in his favor on the issue of liability as a matter of law. Unless the plaintiff is entitled to a directed verdict on the issue of liability, any new trial must include both issues of liability and damages.

HISTORY: 1988 Act No. 432, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 275k163(1).

New Trial 163(1).

C.J.S. New Trial Sections 280 to 282.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 82, Post‑Verdict and Post‑Trial Motions.

Forms

South Carolina Litigation Forms and Analysis Section 38:7 , Motion for New Trial on the Issue of Damages.

South Carolina Litigation Forms and Analysis Section 38:8 , Order Granting New Trial on the Issue of Damages.

NOTES OF DECISIONS

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1. In general

Section 15‑33‑125, limiting new trial on the issue of damages to situations where the plaintiff is entitled to a directed verdict on the issue of liability, does not unconstitutionally infringe upon the judiciary’s authority to promulgate rules. Stokes v. Denmark Emergency Medical Services (S.C. 1993) 315 S.C. 263, 433 S.E.2d 850. Constitutional Law 2366; New Trial 74

**SECTION 15‑33‑135.** Punitive damages: burden of proof.

 In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence.

HISTORY: 1988 Act No. 432, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 115k163; 115k183.

Damages 163, 183.

C.J.S. Damages Sections 254 to 264, 297.

RESEARCH REFERENCES

Encyclopedias

26 Am. Jur. Proof of Facts 2d 183, Medical Malpractice‑Negligence in Postoperative Care of Patient.

54 Am. Jur. Trials 443, Punitive Damages in Products Liability Litigation.

56 Am. Jur. Trials 369, Recovery of Damages for Property Devaluation Caused by Off‑Site Environmental Hazards.

S.C. Jur. Appeal and Error Section 130, Post‑Trial Matters.

S.C. Jur. Damages Section 40, Negligence.

S.C. Jur. Damages Section 45, Standard of Proof‑ Clear and Convincing Evidence.

S.C. Jur. Medical and Health Professionals Section 47, Punitive Damages.

S.C. Jur. Negligence Section 9, Recklessness.

Treatises and Practice Aids

American Law of Products Liability 3d PS STATESTATS, State Statutes.

56 Causes of Action 2d 239, Cause of Action in Premises Liability Against Church or Other Religious Organization.

58 Causes of Action 2d 1, Cause of Action for Injury or Death Against Owner or Operator of Nonresidential Swimming Pool.

LAW REVIEW AND JOURNAL COMMENTARIES

Balancing act: Public policy and punitive damages caps. 49 S.C. L. Rev. 293 (Winter 1998).

Punitive damages in South Carolina: With clarity comes uncertainty. Kyle A. Brannon, 62 S.C. L. Rev. 607 (Summer 2011).

NOTES OF DECISIONS

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1. In general

Law of South Carolina permits jury to award punitive damages to punish, deter, and vindicate rights of plaintiff whenever conduct of defendant is willful, wanton or reckless. Plaintiff must prove by clear and convincing evidence that conduct included a “consciousness of wrongdoing” at time of conduct. Mattison v. Dallas Carrier Corp. (C.A.4 (S.C.) 1991) 947 F.2d 95. Damages 91.5(1)

Under South Carolina law, insured could not recover future value of disability insurance policy as consequential damages in her bad faith action against insurer; insurer had already admitted to liability under policy, and punitive damages were recoverable to punish insurer and to deter future wrongdoing. University Medical Associates of Medical University of S.C. v. UnumProvident Corp., 2004, 335 F.Supp.2d 702. Insurance 3374; Insurance 3376

Evidence showing that before the original sale of minivan, manufacturer was conscious of the danger of defective liftgate latch, and that manufacturer’s failure to remedy the latch problem continued after the plaintiff’s vehicle was manufactured warranted an award of punitive damages under South Carolina law on negligent design claim against manufacturer of minivan whose liftgate opened in a rollover accident, causing passenger to be ejected and killed. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Damages 189.5

Punitive damages were not available to police officer in action against driver’s father, under family purpose doctrine, for injuries sustained when officer’s cruiser was rear‑ended by third party during course of traffic stop involving driver. Gause v. Smithers (S.C. 2013) 403 S.C. 140, 742 S.E.2d 644. Automobiles 249.2

The family purpose doctrine’s reliance on agency principles is somewhat of a legal fiction which cannot logically be extended to allow recovery of punitive damages. Gause v. Smithers (S.C. 2013) 403 S.C. 140, 742 S.E.2d 644. Automobiles 249.2

Ordinarily, the test for punitive damages is whether the tort has been committed in such a manner or under circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff’s rights, or it may be satisfied by evidence of the causative violation of an applicable statute. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Damages 91.5(1)

Defendant preserved on appeal his arguments that plaintiff was not entitled to punitive damages, where special attorney sent draft order to counsel for the parties for review and comment, and defendant’s attorney specifically objected to the punitive damages, and the reduction of the punitive damages in the final order was tantamount to a ruling on this objection. Hale v. Finn (S.C.App. 2010) 388 S.C. 79, 694 S.E.2d 51, rehearing denied. Appeal and Error 221; Appeal and Error 242(1)

The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant’s behavior was reckless, willful, or wanton. Mishoe v. QHG of Lake City, Inc. (S.C.App. 2005) 366 S.C. 195, 621 S.E.2d 363, rehearing denied, certiorari denied. Damages 208(8)

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant’s misconduct was willful, wanton, or with reckless disregard for the plaintiff’s rights. Mishoe v. QHG of Lake City, Inc. (S.C.App. 2005) 366 S.C. 195, 621 S.E.2d 363, rehearing denied, certiorari denied. Damages 91.5(1); Damages 189.5

There is no formula or standard that can be used as a measure for assessing punitive damages, but factors relevant to consideration of punitive damages are: (1) character of defendant’s acts; (2) nature and extent of harm to plaintiff which defendant caused; (3) defendant’s degree of culpability; (4) punishment that should be imposed; (5) duration of the conduct; (6) defendant’s awareness or concealment; (7) existence of similar past conduct; (8) likelihood award will deter defendant or others from like conduct; (9) whether award is reasonably related to harm likely to result from such conduct; and (10) defendant’s wealth or ability to pay. Austin v. Specialty Transp. Services, Inc. (S.C.App. 2004) 358 S.C. 298, 594 S.E.2d 867. Damages 94.1

Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future; moreover, they serve as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Damages 87(1); Damages 91.5(1)

In cases in which issue of punitive damages is submitted to jury, there must be clear and convincing evidence of actual malice to warrant such award. Hainer v. American Medical Intern., Inc. (S.C. 1997) 328 S.C. 128, 492 S.E.2d 103, rehearing denied. Damages 189.5

Plaintiff has burden of proving punitive damages by clear and convincing evidence. Taylor v. Medenica (S.C. 1996) 324 S.C. 200, 479 S.E.2d 35, rehearing denied. Damages 163(1)

1.5. Due process

There are three stages to a trial court’s review of punitive damages; first, the court must determine whether the defendant’s conduct rises to the level of culpability warranting a punitive damages award, second, the trial judge must conduct a post‑trial review to ensure that the award does not deprive the defendant of due process, and third, whether, in the exercise of its discretion, it finds the award excessive or inadequate. Solanki v. Wal‑Mart Store No. 2806 (S.C.App. 2014) 410 S.C. 229, 763 S.E.2d 615, rehearing denied, certiorari denied. Constitutional Law 4427; Damages 208(8); New Trial 76(1)

The eight‑factor post‑verdict review for trial courts to conduct to determine if a punitive damages award comports with due process looks at: (1) defendant’s degree of culpability; (2) duration of the conduct; (3) defendant’s awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant’s ability to pay; and finally, (8) other factors deemed appropriate. Solanki v. Wal‑Mart Store No. 2806 (S.C.App. 2014) 410 S.C. 229, 763 S.E.2d 615, rehearing denied, certiorari denied. Constitutional Law 4427; Damages 94.1

Bank’s conduct was sufficiently reprehensible to support constitutionality, under the due process clause, of a punitive damages award, in negligence action by minor life insurance beneficiary arising out of misappropriation of minor’s funds by conservator; bank failed to set up minor’s accounts with proper safeguards to protect his funds, loss of minor’s funds opened up possibility he might not be able to afford his medical expenses, and bank readily allowed conservator to circumvent bank safeguards. Cody P. v. Bank of America, N.A. (S.C.App. 2011) 395 S.C. 611, 720 S.E.2d 473, rehearing denied. Banks and Banking 148(2); Banks and Banking 155; Constitutional Law 4427

1.9. Reprehensible conduct

In considering reprehensibility factor in punitive damages award, a court should consider defendant’s culpability, the duration of the conduct, the defendant’s awareness or concealment, and the existence of similar past conduct. Limehouse v. Hulsey (S.C.App. 2011) 397 S.C. 49, 723 S.E.2d 211, rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987. Damages 94.2

In considering reprehensibility factor in punitive damages award, a court should consider whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. Limehouse v. Hulsey (S.C.App. 2011) 397 S.C. 49, 723 S.E.2d 211, rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987. Damages 94.2

Attorney’s slanderous statements alleging that owner of staffing agency set the community back 150 years, engaged in blatant indentured servitude, and created a perfect racketeering scheme just like a certain fictional television character involved in organized crime were sufficiently reprehensible to support $5 million punitive damages award, although the harm was not physical and posed no threat to health or safety, where circumstances clearly indicated that the statements would be publicly reported and widely disseminated, and conduct was not the result of accident or inadvertence in that statements were contemplated, intentionally made, and coincided precisely with a filing of class action. Limehouse v. Hulsey (S.C.App. 2011) 397 S.C. 49, 723 S.E.2d 211, rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987. Libel and Slander 121(2)

2. Reckless, willful or wanton

Law of South Carolina permits jury to award punitive damages to punish, deter, and vindicate rights of plaintiff whenever conduct of defendant is willful, wanton or reckless. Plaintiff must prove by clear and convincing evidence that conduct included a “consciousness of wrongdoing” at time of conduct. Mattison v. Dallas Carrier Corp. (C.A.4 (S.C.) 1991) 947 F.2d 95. Damages 91.5(1)

Genuine issue of material fact existed as to whether disability insurer had corporate business plan to deny benefits to insured persons even where payment of benefits was clearly warranted, precluding summary judgment on insured’s claim for punitive damages under South Carolina law in action alleging that insurer engaged in bad faith. University Medical Associates of Medical University of S.C. v. UnumProvident Corp., 2004, 335 F.Supp.2d 702. Federal Civil Procedure 2501

In South Carolina, actual damages are not limited by the contract and if the plaintiff can demonstrate that the insurer’s actions were willful or in reckless disregard of the insured’s rights, she can recover punitive damages. University Medical Associates of Medical University of S.C. v. UnumProvident Corp., 2004, 335 F.Supp.2d 702. Insurance 3374; Insurance 3376

A conscious failure to exercise due care constitutes willfulness for purposes of awarding punitive damages under South Carolina law. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Damages 91.5(1)

Punitive damages of $250 million awarded against multibillion dollar corporation which manufactured minivan with defective liftgate latch, which failed, thereby allowing the liftgate to open in a rollover accident and cause passenger to be ejected and killed were well justified under South Carolina law and not the result of passion or prejudice; manufacturer designed the liftgate latch by recklessly resurrecting an outmoded, unsafe design that long before had been discarded as completely inadequate for use in passenger vehicles; failed to test the latch before placing a defective product in the stream of commerce, though fully cognizant of the grave risk and fact of serious injuries and deaths; consciously refused to remedy the defect; attempted in various ways to conceal its wrongdoing, and continued to sell the “safety” of its minivans, reaping billions of dollars in profits along the way. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Damages 94.10(2)

The terms “willful” and “wanton” when pled in a negligence action are synonymous with “reckless” and import a greater degree of culpability than mere negligence, and evidence that the defendant’s conduct breached this higher standard entitles the plaintiff to a charge on punitive damages. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Damages 215(2); Negligence 274; Negligence 275

Evidence was sufficient to show that vehicle manufacturer acted in reckless, willful or wanton manner in installing in its vehicles defective speed control deactivation switch with kapton seal that failed to prevent brake fluid from entering electrical side of switch, as grounds for punitive damages; manufacturer had assigned group of scientists to investigate cause of under‑hood fires in particular line of vehicles, scientists identified defective switch as cause and detailed findings in report to manufacturer, and report was basis for vehicle recall prior to manufacture of owners’ vehicle, but despite such knowledge, manufacturer continued to install defective switch. Duncan v. Ford Motor Co. (S.C.App. 2009) 385 S.C. 119, 682 S.E.2d 877, rehearing denied. Damages 91.5(4)

Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant’s misconduct was willful, wanton, or in reckless disregard of the plaintiff’s rights. Mellen v. Lane (S.C.App. 2008) 377 S.C. 261, 659 S.E.2d 236, rehearing denied, certiorari denied. Damages 91.5(1); Damages 189.5

Evidence in guardian ad litem’s defamation action against newspaper publisher supported jury’s finding that publisher acted with actual malice, and thus, guardian, as a private figure, was entitled to recover punitive damages; newspaper published allegations in a front‑page story about a private figure which, on their face, appeared potentially devastating to guardian’s reputation, portion of the article pertaining to guardian was based solely on a short telephone conversation with an admittedly “incensed” person, and newspaper purportedly failed to even try to contact guardian to discuss the matter. Erickson v. Jones Street Publishers, L.L.C. (S.C. 2006) 368 S.C. 444, 629 S.E.2d 653, rehearing denied. Libel And Slander 120(2)

In order to recover punitive damages from a media defendant in a defamation case, a private‑figure plaintiff must prove by clear and convincing evidence that the defendant acted with constitutional actual malice, i.e., the defendant published the statement with knowledge it was false or with reckless disregard of whether it was false or not. Erickson v. Jones Street Publishers, L.L.C. (S.C. 2006) 368 S.C. 444, 629 S.E.2d 653, rehearing denied. Libel And Slander 112(1); Libel And Slander 120(2)

When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of “willfulness” for purposes of awarding punitive damages. Mishoe v. QHG of Lake City, Inc. (S.C.App. 2005) 366 S.C. 195, 621 S.E.2d 363, rehearing denied, certiorari denied. Damages 208(8)

A conscious failure to exercise due care constitutes “willfulness” for purposes of awarding punitive damages. Mishoe v. QHG of Lake City, Inc. (S.C.App. 2005) 366 S.C. 195, 621 S.E.2d 363, rehearing denied, certiorari denied. Damages 91.5(1)

Violation of a statute does not constitute recklessness, willfulness, and wantonness per se, but, rather, is some evidence the defendant acted recklessly, willfully, and wantonly, and jury determines whether party has been reckless, willful, and wanton so as to warrant punitive damages award. Austin v. Specialty Transp. Services, Inc. (S.C.App. 2004) 358 S.C. 298, 594 S.E.2d 867. Damages 208(8); Negligence 274; Negligence 275

Partner who personally guaranteed promissory note accompanying mortgage on real property was not entitled to recover punitive damages for general partnership’s breaching its fiduciary duty by deciding to default on the note; totality of the evidence suggested partnership did not act willfully, wantonly, or recklessly, including fact that it followed advice of legal counsel in making decision, though this fact alone was not dispositive. Kuznik v. Bees Ferry Associates (S.C.App. 2000) 342 S.C. 579, 538 S.E.2d 15, rehearing denied, certiorari granted, certiorari dismissed. Partnership 627

A defendant’s following the advice of legal counsel is merely one factor to be considered in determining whether that defendant has acted willfully, wantonly, or recklessly, as required to justify an award of punitive damages. Kuznik v. Bees Ferry Associates (S.C.App. 2000) 342 S.C. 579, 538 S.E.2d 15, rehearing denied, certiorari granted, certiorari dismissed. Damages 91.5(2)

Evidence supported jury’s finding that neurosurgeon acted recklessly during post‑operative care of patient so as to justify award of punitive damages in medical malpractice action brought by deceased patient’s personal representative, where neurosurgeon used narcotic analgesic transdermal patch in a post‑operative setting despite manufacturer’s warning not to use drug in that setting and there was evidence that no other doctor used the transdermal patch in that manner. Welch v. Epstein (S.C.App. 2000) 342 S.C. 279, 536 S.E.2d 408, rehearing denied. Death 93

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant’s misconduct was willful, wanton, or in reckless disregard of the plaintiff’s rights. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Damages 91.5(1); Damages 189.5

Evidence supported finding that defendant pathology lab acted “recklessly” or “willfully” in interpretation and reporting of results of post‑partum Pap smears take from patient who thereafter died from cancer, thus supporting award of punitive damages in ensuing survival and wrongful death action; expert witnesses described abnormal cells present on Pap smears as clear cut, profound, straight forward and obvious, they further stated that lab’s misdiagnosis of both smears constituted deviation from standard of care, and evidence indicated that, had patient been properly diagnosed, her chances for survival were greater than 95%. Hawkins v. Pathology Associates of Greenville, P.A. (S.C.App. 1998) 330 S.C. 92, 498 S.E.2d 395, rehearing dismissed. Death 77

To receive an award of punitive damages, plaintiff has burden of proving by clear and convincing evidence that defendant’s misconduct was willful, wanton, or in reckless disregard of plaintiff’s rights. Lister v. NationsBank of Delaware, N.A. (S.C.App. 1997) 329 S.C. 133, 494 S.E.2d 449, rehearing denied. Damages 91.5(1); Damages 163(1)

2.1. Causation

Before punitive damages arising out of a statutory violation may be submitted to the jury, there must be evidence the violation proximately contributed to the injury. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Damages 208(8)

There must be some inference of a causal link between a statutory violation and the injury to warrant submitting the issue of punitive damages to the jury based on the violation. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Damages 208(8)

3. Damage reduction

Permitting plaintiff in wrongful death and survival action against pathology lab to present evidence of lab’s gross earnings for purposes of punitive damages claim, but allowing lab to reduce that amount to show actual profits earned, was not abuse of discretion. Hawkins v. Pathology Associates of Greenville, P.A. (S.C.App. 1998) 330 S.C. 92, 498 S.E.2d 395, rehearing dismissed. Death 73

3.5. Jury questions

Whether driver’s alleged violation of traffic statutes prohibiting driving at unsafe speed and following too closely amounted to recklessness, as basis for award of punitive damages, was question for jury, in motorist’s action against driver. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Automobiles 245(5); Automobiles 249.2

Trial court could submit issue of punitive damages to the jury in a default damages trial in action by owner of staffing agency against attorney and law firm for slander, where there was evidence that the slander was intentional, and attorney was culpable and aware of the conduct. Limehouse v. Hulsey (S.C.App. 2011) 397 S.C. 49, 723 S.E.2d 211, rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987. Damages 198

Whether bank, through its employees, acted recklessly, willfully, or wantonly, as would support award of punitive damages, was issue for jury in negligence action by minor life insurance beneficiary alleging bank employees allowed minor’s conservator to improperly endorse checks. Cody P. v. Bank of America, N.A. (S.C.App. 2011) 395 S.C. 611, 720 S.E.2d 473, rehearing denied. Banks and Banking 155

3.6. Instructions

Trial court did not improperly instruct jury on punitive damages in staffing agency owner’s action against attorney and law firm for slander, inasmuch as instruction, which used the term “duty,” did not require award of punitive damages, but simply instructed the jury that, if it found the owner entitled to punitive damages, it was their duty to determine the amount to which the owner was entitled; the term “duty” was used in a single statement in an otherwise lengthy and thorough instruction in which the trial court stated the burden of proof and elements of a punitive damages award, and in the very next sentence, clarified the use of the term by stating that, if the jury found owner was entitled to punitive damages in addition to actual damages, it would be their duty to include such damages in the verdict and award such an amount as they deemed reasonable and proper in light of the facts and circumstances. Limehouse v. Hulsey (S.C.App. 2011) 397 S.C. 49, 723 S.E.2d 211, rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987. Libel and Slander 124(8)

3.75. Sufficiency of evidence

Store was not entitled to post‑trial reversal or reduction in patron’s punitive damages award, in gross negligence action against store based on their erroneous processing of patron’s credit card; patron presented sufficient evidence of willful, wanton or reckless misconduct by store to send the issue to the jury. Solanki v. Wal‑Mart Store No. 2806 (S.C.App. 2014) 410 S.C. 229, 763 S.E.2d 615, rehearing denied, certiorari denied. Damages 208(8); New Trial 162(1)

Evidence was sufficient to establish willful, wanton or reckless misconduct by store to send the issue of punitive damages to the jury, in negligence and gross negligence action; store attempted to run patron’s credit card three times, when it was unsuccessful a store employee manually stenciled patron’s credit card, the employee then hand‑keyed information from a different patron into the register, the receipt had patron’s signature but information belonging to another patron, and patron testified that he never used anyone else’s credit card information at store. Solanki v. Wal‑Mart Store No. 2806 (S.C.App. 2014) 410 S.C. 229, 763 S.E.2d 615, rehearing denied, certiorari denied. Damages 208(8)

4. Review

Even where the trial court has submitted the issue of punitive damages arising out of statutory violations to a jury, the defendant still has an opportunity to challenge the propriety of any resulting punitive damages award. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Damages 208(8)

The trial court has the authority to review the punitive damages award and if the court finds the award is inappropriate or excessive, it has the discretion to order a new trial or remittitur. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. New Trial 162(1)

In reviewing an award of punitive damages, Court of Appeals considers: (1) the reprehensibility of the conduct, (2) the disparity or ratio between actual harm and the punitive damages award, and (3) the comparative penalties. Limehouse v. Hulsey (S.C.App. 2011) 397 S.C. 49, 723 S.E.2d 211, rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987. Appeal and Error 1013; Damages 94.1

Attorney who had represented client in underlying civil litigation matter was not entitled to punitive damages as result of other attorney’s retention of attorney fees disbursed to him and his former law firm in connection with the matter, as the harm resulting from other attorney’s failure to disclose attorney’s interest in the fees was economic rather than physical, any breach of duty on other attorney’s part, therefore, could not be found to evince an indifference to or a reckless disregard of health or safety of others, there was no evidence that attorney, the aggrieved party, had financial vulnerability, other attorney’s conduct involved only an isolated incident rather than repeated actions, and harm to attorney was not the result of intentional malice, trickery, or deceit on other attorney’s part. Hale v. Finn (S.C.App. 2010) 388 S.C. 79, 694 S.E.2d 51, rehearing denied. Attorney and Client 151

The factors to be used when conducting a review of a punitive damage award are: (1) defendant’s degree of culpability; (2) duration of the conduct; (3) defendant’s awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant’s ability to pay; and (8) other factors deemed appropriate. Durham v. Vinson (S.C. 2004) 360 S.C. 639, 602 S.E.2d 760, rehearing denied. Damages 94.1

The trial judge has considerable discretion regarding the amount of damages, both actual or punitive, awarded; because of this discretion, review on appeal is limited to the correction of errors of law. Kuznik v. Bees Ferry Associates (S.C.App. 2000) 342 S.C. 579, 538 S.E.2d 15, rehearing denied, certiorari granted, certiorari dismissed. Appeal And Error 1013; Damages 94.7; Damages 96; Damages 104; Damages 119

5. Actual damages

Punitive damages may be awarded only if actual damages are awarded. Mattison v. Dallas Carrier Corp. (C.A.4 (S.C.) 1991) 947 F.2d 95. Damages 87(2)

Motorist who was injured when tractor‑trailer truck struck his automobile was entitled to $2,158,000 in punitive damages, and motorist’s wife, who was also injured in accident, was entitled to $442,000 in punitive damages; punitive damages awarded to motorist were approximately 2.54 times his actual damages of $850,000, punitive damages awarded to wife were approximately 2.5 times her actual damage award of $175,000, punitive damage award in each instance was a single‑digit multiplier and comported with due process, and punitive damage awards to motorist and his wife were not excessive. Austin v. Specialty Transp. Services, Inc. (S.C.App. 2004) 358 S.C. 298, 594 S.E.2d 867. Automobiles 249.2; Constitutional Law 4427

Guarantors’ potential liability if mortgagee prevailed in his action to collect on note and mortgage did not amount to actual compensable damages, precluding guarantors’ recovery of punitive damages on their counterclaim against mortgagee for fraud. Collins Music Co. Inc. v. FMW Corp. (S.C. 2003) 355 S.C. 446, 586 S.E.2d 128. Fraud 61

Any expenses that guarantors of promissory note secured by mortgage may have incurred in defending mortgagee’s action to collect on note and mortgage did not amount to actual fraud damages, as required for guarantors to recover punitive damages on their counterclaim alleging that mortgagee fraudulently induced them to guarantee note and mortgage. Collins Music Co. Inc. v. FMW Corp. (S.C. 2003) 355 S.C. 446, 586 S.E.2d 128. Fraud 61

Punitive damages generally are not recoverable in the absence of proof of actual damages. Dykema v. Carolina Emergency Physicians, P.C. (S.C. 2002) 348 S.C. 549, 560 S.E.2d 894. Damages 87(2)

Punitive damages may be awarded only upon a finding of actual damages. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Damages 87(2)