



Florida Torts

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VI. REMEDIES
CHAPTER 113 PUNITIVE DAMAGES
I. LEGAL BACKGROUND

B. Determining the Amount of Punitive Damages That May Be Awarded

4-113 Florida Torts § 113.20

§ 113.20 Statutory Limitations on Award of Punitive Damages

[1] General Statutory Cap on Punitive Damages

For causes of action arising after October 1, 1999, an award of punitive damages generally may not exceed the greater of three times the amount of compensatory damages awarded to each claimant, or the sum of \$500,000 [Fla. Stat. § 768.73(1)(a)]. However, a greater amount of damages are permitted in cases in which the fact finder determines that the wrongful conduct was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, were actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant. In such a case, an award of punitive damages may not exceed the greater of four times the amount of compensatory damages awarded to each claimant, or the sum of \$2 million [Fla. Stat. § 768.73(1)(b)].

The statutory cap applies in any civil action based on negligence, strict liability, products liability, misconduct in commercial transactions, professional liability, or breach of warranty [Fla. Stat. § 768.73(1)(a)]. Certifying the issue to the Supreme Court, the Fourth District held that the purchase of an automobile for the buyer's personal use is not a "commercial transaction" within the meaning of the statute so as to limit punitive damages to three times the amount of compensatory damages in actions based on misconduct in commercial transactions. Therefore, the trial court properly refused to limit damages to three times the amount of compensatory damages in an action alleging fraudulent misrepresentation and unconscionable or unfair trade practices in the sale of a "low mileage demo" car that had allegedly never been in an accident. In reaching its decision, the court characterized the sale as a "consumer transaction" rather than a "commercial transaction" [*see Coral Cadillac, Inc. v. Stephens*, 867 So. 2d 556, 559 (Fla. 4th DCA 2004), *review denied*, 2004 Fla. LEXIS 1479 (Fla. 4th DCA 2004)].

In determining whether an award exceeds three times the amount of compensatory damages, the Fourth District has ruled that prejudgment interest may be included in the calculation of the amount of compensatory damages awarded. The court found that prejudgment interest is an element of compensatory damages and should not be separated out for purposes of calculating the proper amount of punitive damages [*Christenson & Assocs. v. Palumbo-Tucker*, 656 So. 2d 266, 267 (Fla. 4th DCA 1995)].

[2] Cases in Which Statutory Limits Do Not Apply

There is no statutory limit on punitive damages if the fact finder determines that, at the time of injury, the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant [Fla. Stat. § 768.73(1)(c)]. The statutory limits also do not apply to any defendant who, at the time of the act or omission for which punitive damages are sought, was under the influence of any alcoholic beverage or drug to the extent that the

defendant's normal faculties were impaired, or who had a blood or breath alcohol level of 0.08 percent or higher [Fla. Stat. § 768.736].

Nevertheless, even in cases involving defendants under the influence of alcohol, punitive damages are still limited by the common law rule that an award of punitive damages may not be so large as to exceed the defendant's current ability to pay [*Zuckerman v. Robinson*, 846 So. 2d 1257, 1260 (Fla. 4th DCA 2003) , *review denied*, 868 So. 2d 524 (Fla. 2004)] . However, the Fourth District has questioned whether this common-law limitation should apply when the legislature has singled out DUI cases as uniquely qualified for punitive damages. The statute permits awards greatly exceeding any objective limit that may legally be awarded under current statutory law. Conspicuously, nothing in the statute suggests a limit on punitive damages based on the defendant's financial resources [*see Zuckerman v. Robinson*, 846 So. 2d 1257, 1260-1261 (Fla. 4th DCA 2003) , *review denied*, 868 So. 2d 524 (Fla. 2004) ; *see also* Fla. Stat. § 768.736].

[3] Special Provisions for Certain Actions

[a] Abuse Actions. Special statutory provisions apply to civil actions based on child abuse, abuse of the the elderly under Chapter Fla. Stat. 415, or abuse of the developmentally disabled [Fla. Stat. § 768.735(1)]. In such cases, the judgment for the total amount of punitive damages awarded to a claimant may not exceed three times the amount of compensatory damages awarded to each person entitled to damages [Fla. Stat. § 768.735(2)(a)]. If an award for punitive damages exceeds three times the compensatory damages, it is presumed to be excessive and the defendant is entitled to remittitur of the amount in excess of the limitation unless the claimant demonstrates to the court by clear and convincing evidence that the award is not excessive in light of the facts and circumstances that were presented to the trier of fact [Fla. Stat. § 768.735(2)(b)]. The court also has discretion to determine the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages [Fla. Stat. § 768.735(2)(c); *see* Fla. Stat. § 768.74; *see also* § 113.22].

[b] Actions Involving Nursing Home Patients. Special punitive damages statutes also apply to claims brought pursuant to Section 400.023, Florida Statutes and Fla. Stat. Section 400.429. Section 400.023 provides the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of the residents rights. Section 400.429 contains the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a resident arising out of negligence or a violation of the resident's bill of rights [*see* Fla. Stat. § 400.428]. In these types of actions, punitive damages generally may not exceed the greater of three times the amount of compensatory damages awarded to each claimant, or the sum of \$1 million [Fla. Stat. §§ 400.0238(1)(a), 400.4298(1)(a)]. However, if the wrongful conduct was motivated primarily by unreasonable financial gain, damages may not exceed the greater of four times the amount of compensatory damages or \$4 million [Fla. Stat. §§ 400.0238(1)(b), 400.4298(1)(b)]. Furthermore, if the fact finder determines that the defendant had a specific intent to harm the claimant, there is no cap on punitive damages [Fla. Stat. §§ 400.0238(1)(c), 400.4298(1)(c)].

[4] Successive Awards for Single Course of Conduct

Punitive damages generally may not be awarded against a defendant in a civil action if that defendant establishes, before trial, that punitive damages have previously been awarded against that defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages. The term "the same act or single course of conduct" includes acts resulting in the same manufacturing defects, acts resulting in the same defects in design, or failure to warn of the same hazards with respect to similar units of a product [Fla. Stat. § 768.73(2)(a)]. Nevertheless, in subsequent civil action, if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish the defendant's behavior, the court may permit a jury to consider an award of subsequent punitive damages. In permitting a jury to consider awarding subsequent punitive damages, the court must make specific findings of fact in the record to support its conclusion. In addition, the court may consider whether the defendant's act or course of conduct has ceased. Any subsequent punitive damage awards must be reduced by the amount of any earlier punitive damage awards rendered in state or federal court [Fla. Stat. § 768.73(2)(b)].

[5] Jury May Not Be Informed of Statutory Limitations

The jury may not be instructed or informed as to the statutory provisions limiting the amount of punitive damages and subsequent awards of punitive damages [Fla. Stat. § 768.73(4)].

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