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Only Plaintiffs Can Constitutionally Receive Punitive Damages

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consumers. The attorney general's expert witnesses, moreover, testified that consumers probably would not spend time to identify specific products and then phone to receive warnings. The experts explained that impulse motivates two-thirds of grocery buying decisions and that consumers typically decline to research inexpensive purchases.

Expert testimony also established that the Council's store signs were inconspicuous, that the newspaper advertisements were infrequent, and that the phone line's taped messages would likely discourage all but the most diligent consumers. The court recognized that the small number of warnings the Council provided in its first year resulted from consumers' assumption of product safety, rather than from their apathy. One expert testified that the least effective product label would convey warnings required under the Act more effectively than the Council's toll-free phone system. ♦

— *Matthew Brady*

Only Plaintiffs Can Constitutionally Receive Punitive Damages

In *Smith v. States General Life Ins. Co.*, 592 So. 2d 1021 (Ala. 1992), the Alabama Supreme Court held that a trial court lacks the authority to allo-

cate a portion of a constitutionally valid punitive damage to any entity other than a plaintiff.

Fraudulent Insurance

Martin B. Smith ("Smith") purchased a medical insurance policy from Fred White ("White"). At the time of the purchase, White represented to Smith that the insurance company would reconsider certain conditions excluded from the policy one year later. White stated that if, upon the reconsideration of the policy a year later, Smith's physical condition remained stable or improved, the insurance company would delete the exclusions.

The actual policy, which was issued by States General Life Insurance Company ("States"), included States' standard "Reconsideration Privilege." This provision also indicated that States would consider deleting any exclusions one year after the issuance of the policy.

Smith sued States, White, and White's employer, The Barton Agency ("Defendants"), claiming fraud in and about the sale of a policy for medical insurance coverage. Smith alleged that the Defendants never intended to reconsider the policy exclusions. In addition, Smith stated that the Defendants intended to deceive him in an effort to induce him to buy the policy.

Smith filed his claim and presented his case to a jury. The jury awarded Smith punitive damages of \$250,000 and compensatory damages of \$600. The Defendants filed several post-trial motions asserting that the punitive damage award was excessive.

Sorry Insurance Company

Based on its conclusion that the punitive damage award was within the jury's authority, the trial court denied the Defendants' motions. The trial court based its evaluation of the punitive damages on statutory law and two Alabama cases, *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986) and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989). In accordance with the applicable statute, Ala. Code § 6-11-23, and these cases, the court found that the punitive damage award was proper and an appropriate tool with which to punish the Defendants.

Specifically, the trial court noted that the award represented a windfall to Smith and would injure, but not seriously affect, States. The court also determined that the punitive award was not related to the compensatory award. In addition, the court considered the high degree of reprehensibility and the pattern of conduct employed by States. Although the court found that States had ample opportunity to remedy the situation, it noted that States had neither acknowledged nor made any attempt to remedy the wrong.

The trial court proceeded to allocate one-half of the punitive damages awarded to Smith to the American Heart Association. In so doing, the court relied on the concurring opinion in *Fuller v. Preferred Risk Life Ins. Co.*, 577 So. 2d 878 (Ala. 1991) in which Justice Shores stated that trial courts have the inherent power to allocate punitive damages. Within this power, the court could allocate an award in a way that would serve the purposes behind punitive damages to a greater degree than to grant the whole award to the plaintiff. An appeal was filed and taken to the Alabama Supreme Court.

Punitive Damage Award Was Proper

The Supreme Court of Alabama upheld the \$250,000 punitive damage award. The court noted that based on the trial court's findings, there was no evidence indicating that the jury's verdict was founded on improper motives

Announcement

Mini-Van Recall

Ford Motor Co. and Nissan Motor Co. have recalled some 1993-model mini-vans because the vehicles may have suffered accidental fuel hose cuts during assembly. The 1,700 vehicles recalled are the Mercury Villager and the Nissan Quest, which are the products of a joint venture between Ford and Nissan and which are built side-by-side at a plant in Avon Lake, Ohio. The fuel-hose problem may cause fuel leaks in those vehicles.

Recent Cases

or that the Defendants had been deprived of their property without due process of the law.

Allocation of Punitive Damage Beyond Court's Authority

The Alabama Supreme Court, however, reversed the trial court's allocation of one-half the punitive damages to the American Heart Association. In reversing, the court relied on the majority opinion in *Fuller*. In *Fuller*, the court held that it is the function of the jury to determine the appropriate amount of punitive damages. Furthermore, the court relying on *Barry v. Edmunds*, 116 U.S. 550 (1886), noted the U.S. Supreme Court's recognition of the jury's sole authority in this area.

The court also recognized the trial court's authority to grant a new trial or a reduction of an excessive jury ver-

dict. However, the court noted that these exercises of authority were only appropriate upon a finding that the jury verdict was flawed. Since the trial court specifically held that the verdict in this case was not flawed, the allocation of the damages to any other party except Smith was improper.

Concurring and Dissenting Opinions

Justices Shores and Steagall both agreed with the majority's opinion regarding the punitive damage award. However, they both indicated that a court has the authority to allocate a portion of punitive damages to another entity besides the plaintiff. Justice Shores noted that many legal scholars support partial allocation as furthering the cause of justice.

Justice Steagall advocated a limit on

the court's authority to direct awards into Alabama's general state fund. However, Steagall stated that no limit for the allocation to a state's fund was necessary if it served the public interest. Furthermore, Judge Shores noted that the purposes of punitive damages, punishment and deterrence, would be accomplished even if the court awarded punitive damages to someone other than the plaintiff.

The justices noted that since a plaintiff does not have a constitutional right to punitive damages, no cause of action results when a court allocates a portion of these damages to an entity other than the plaintiff. Similarly, a defendant's right to a fair trial is not impaired if a portion of the damages assessed by the jury is allocated to an entity other than the plaintiff. ♦

— JoAnne Juliano Giger

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