



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

Special Session Legal Reforms Fact Sheet

Punitive Damages

- With a stroke of the pen, the Wisconsin Supreme Court in 2005 rewrote the standard for punitive damages. (*LeRoy M. Strenke v. Levi Hogner and Nau Country Insurance Company & Patricia Wischer, et. al v. Mitsubishi Heavy Industries America, Inc., et.al.*)
- In these two cases, the Court ignored the law passed by the Legislature adopting a heightened standard for punitive damages and instead wrote a weaker standard.
- Punishment and deterrence are the only legitimate reasons for the assessment of punitive damages in civil cases. An award of punitive damages does nothing to make a plaintiff whole – that is accomplished through the award of special/economic damages including medical expenses, property damage, lost wages, etc. and, in appropriate cases, noneconomic damages including pain and suffering.
- Since the civil justice system (in lieu of the criminal justice system) is being used for punishment and deterrence, the bar for assessment of punitive damages must be set high and used in only the most egregious cases.
- In 1995, the Legislature agreed that the standard had eroded over the years to mirror merely a heightened degree of negligence. Therefore, the Legislature adopted a strict standard for the award of punitive damages, which was, at the time, believed to be among the most stringent in the country. (1995 Wis. Act 17)
- On March 18, 2005, the Wisconsin Supreme Court handed down two opinions relating to Wisconsin law on punitive damages. The Court issued its interpretation of the Wisconsin statute [s. 895.85 (3)] adopted in the 1995 legislative session.
- While the Court recognized that the Legislature created a “heightened standard” in its adoption of s. 895.85 (3), it rejected the stricter interpretation of the Appeals Court in the *Mitsubishi* case, reversed that decision, and held that the punitive question was appropriate to be presented to the jury.
- Despite its recognition of legislative intent to adopt a heightened standard, the majority on the Supreme Court actually used the opportunity to craft a standard, based on the Court’s interpretation, that was *weaker* than that which existed prior to the Legislature’s action in the 1995 session.
- This legislation restores the heightened standard for awarding punitive damages back to its original form prior to the Supreme Court decisions.