

Connecticut **Law**Tribune

December 10, 2012

An **ALM** Publication



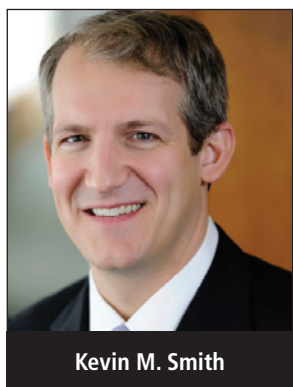
Punitive Damage Limits In Product Liability Action

STATE STATUTE, COMMON LAW WEIGH HEAVILY IN TWO KEY CONN. CASES

By **KEVIN M. SMITH** and **JAMES O. CRAVEN**

Appropriate limits to punitive damages awards in product liability actions have been the subject of great debate over the past few years. Most of the debate has focused on federal due process limitations in the wake of several important U.S. Supreme Court decisions that struck down large punitive damages awards as unconstitutional.

But just as important to many Connecticut product liability actions is the issue of whether punitive damages awarded under the Connecticut Product Liability Act are limited solely to twice the amount of compensatory damages as the act provides, or also to attorney fees under Connecticut's traditional common law rule for punitive damages. This issue has been percolating for some time, and was decided recently in two important decisions – one in federal court, one in state court, both



Kevin M. Smith



James O. Craven

on appeal. The ultimate resolution of this issue is of significant interest and importance to both sides of the product liability bar in Connecticut.

Conn. Common Law Rule

In many jurisdictions, punitive damages are limited only by federal due process constraints and are calculated by taking into account a number of factors, such as the relative wealth of the defendant, the nature of the alleged misconduct, the facts and cir-

cumstances surrounding the conduct, the cost of the litigation, and the amount of actual damages awarded. Connecticut is different. Its formulation of a punitive damages award is rooted in a century-old common law doctrine that calculates punitive damages according to – and caps them at no more than – the expense of litigation, including reasonable attorney fees, minus taxable costs. See *Hanna v. Sweeney*, 78 Conn. 492 (1906).

This traditional common law rule continues today, as embodied, for example, in the standard Civil Jury Instruction No. 3.4-4 & Notes (“Punitive damages are limited to the costs of litigation, including attorney fees, less taxable costs. Within that limitation, the extent to which they are awarded is within your sole discretion.”).

Conn. Product Liability Act

In 1979, the General Assembly enacted the Connecticut Product Liability Act, the express purpose of which was to address concerns associated with the rising cost of product liability litigation and insurance, which had created an unfavorable business climate. The legislature sought to remedy this situation by, among other things, capping punitive damages. Specifically, the act, in Connecticut General Statutes § 52-240b, provides that, if the trier of fact determines that punitive damages should be awarded, the court shall determine the amount of such damages “not to exceed an amount equal to twice the damages awarded to the plaintiff.”

The issue not explicitly addressed by this limit is whether it is in addition to or in lieu of the longstanding common law rule in Connecticut limiting punitive damages to attorney fees, which applied to product liability actions prior to the act. See, e.g., *Champagne v. Raybestos-Manhattan Inc.*, 212 Conn. 509, 559, 569 n.41 (1989) (applying common law limit as expressed in *Waterbury Petroleum Products Inc. v. Canaan Oil and Fuel Co.*, 193 Conn. 208, 234-35 (1984), to product liability claim accruing before the act).

Important Decisions

In the 33 years since the Connecticut Product Liability Act was enacted, neither the Connecticut appellate courts nor the U.S. Court of Appeals for the Second Circuit has addressed the issue. However, in *Izzarelli v. R.J. Reynolds Tobacco Co.*, 767 F. Supp. 2d 324 (D. Conn.

2010), U.S. District Judge Stefan R. Underhill held that the act did not, *sub silentio*, abrogate the common law limit on punitive damages.

In that case, among other things, Judge Underhill discussed the longstanding common law rule in Connecticut, the lack of statutory language or legislative history indicating an intent to change that rule and the indication of a contrary intent, for example, by the statute’s inclusion of the common law standard for when the trier of fact may award punitive damages. He also discussed the legislature’s rejection of an initial formulation of what became § 52-240b that would have expressly permitted punitive damages “in addition to” attorney fees and that would have included a multi-factor test for quantifying those exemplary damages.

The plaintiff in *Izzarelli* had argued that the General Assembly’s enactment of a statutory cap of twice the plaintiff’s damages implied its intent to discard the common law limitation. Judge Underhill disagreed, explaining that the argument ignored Connecticut’s rule against construing statutes as implicitly (as opposed to explicitly) abrogating the common law as well as the act’s legislative history. In his view, the statutory cap serves a purpose that is complementary to the traditional common law limit of attorney fees in that it “discourages expensive

litigation of cases involving small compensatory damages by preventing plaintiff from recovering a large punitive award based on the cost of litigation where the compensatory award is comparatively small.”

Judge Underhill is not alone in holding that the Connecticut Product Liability Act preserves the common law limit on punitive damages in addition to adding the statutory cap of twice compensatory damages. Shortly after the *Izzarelli* decision, Superior Court Judge John Blawie construed the act in the same manner in *R.I. Pools Inc. v. Paramount Concrete Inc.*, 2011 Conn. Super. LEXIS 3067 (Conn. Super. Ct. Dec. 5, 2011).

Both cases are on appeal. *Izzarelli* has been fully briefed and is awaiting oral argument before the Second Circuit Court of Appeals. *R.I. Pools* is currently pending before the Connecticut Appellate Court, but has not yet been fully briefed. As with most appeals, it is possible that the issue addressed here may not be reached in either or both cases, depending upon a number of factors, including the courts’ dispositions of the other issues raised in the appeals. Nonetheless, given the possibility of an appellate ruling on this important issue, the ultimate resolution of these cases is of great importance to counsel involved in actions seeking punitive damages under the Connecticut Product Liability Act. ■

Kevin M. Smith is a partner in the Litigation Department of Wiggin and Dana LLP whose practice focuses on commercial litigation and product liability. James O. Craven is President of the Connecticut Defense Lawyers Association and is counsel in Wiggin and Dana’s Litigation Department, also practicing in the area of product liability.