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Precedents for Putting Limits in the “Reinsurance Bill”

A Dozen Federal Laws That Prohibit or Limit Punitive Damages

The House of Representatives passed its “reinsurance bill” (H.R. 3210) on November 29, 2001, but the Senate has yet to act – in part because of differences over punitive damages. Because a “reinsurance bill” would make the taxpayers of the United States the ultimate guarantors of the financial health of the reinsurance industry, the House of Representatives voted to prohibit punitive damages. Many Senators think the House got it right, but other Senators want to give trial lawyers unlimited access to the “deep pockets” of the United States Treasury.

There are numerous examples of Congress (and the courts) acting to forbid or limit punitive damages. Those who want to forbid punitive damages in the “reinsurance bill” often point to the example of the Federal Tort Claims Act (FTCA), which is perhaps the most instructive example. That example and a sample of other bipartisan laws are listed below. (Many of these examples are taken from L. Nugent, *PUNITIVE DAMAGES: A STATE BY STATE GUIDE TO LAW AND PRACTICE* §1.5 (2001 pocket part).)

1. Federal Tort Claims Act (1946). FTCA permits the U.S. Government to be sued for tort claims “in the same manner and to the same extent as a private individual under like circumstances,” but “not be liable for . . . punitive damages.” 28 U.S.C.A. §2674. The Supreme Court addressed the definition of “punitive damages” in *Molzof v. United States*, 502 U.S. 301 (1992).

2. Federal Employers’ Liability Act (1908). FELA, 45 U.S.C.A. §51, authorizes “survivors of deceased employees to recover ‘damages’ for any person ‘suffering injury’ or ‘death’ resulting from the negligence of a railroad employer. It is clear that punitive damages are not recoverable by the beneficiaries of a decedent under the wrongful death provision of the FELA.” J. Stein, *STEIN ON PERSONAL INJURY DAMAGES* §4:27.

3. Foreign Sovereign Immunities Act (1976). Under FSIA, “foreign states are protected from liability for punitive damages in any lawsuit in the United States in which a foreign state is a party,” 28 U.S.C.A. §1606. [Nugent]

4. Warsaw Convention (1929). “An air carrier’s liability for injuries to passengers, their

baggage, or goods during international flights is governed by the Warsaw Convention. . . . Those courts that have addressed the issue of the recoverability of punitive damages under the Warsaw Convention have concluded that punitive damages are not recoverable. In addition, courts have also held that the Warsaw Convention preempts state law claims for the recovery of punitive damages.” [Nugent]

5. Air Transportation Safety and System Stabilization Act of 2001. This recently enacted law provides that liability for all claims against air carriers for the events of September 11, whether compensatory or punitive, “shall not be in an amount greater than the limits of the liability coverage maintained by” the carrier. Public Law 107-42, §§408-409.

6. Jones Act (1915). 46 U.S.C.A. Appendix §762 permits seamen to recover for injuries caused by the negligence of their employers, but “punitive damages are not recoverable.” [Nugent]

7. Death on the High Seas Act (1920). DOHSA provides a cause of action for the wrongful death of a seaman, 46 U.S.C.A. Appendix §762. “[C]ourts have held that punitive damages are not recoverable under DOHSA.” [Nugent]

8. Y2K Act (1999). 15 U.S.C.A. §6604 was enacted to protect private entities and governments from Y2K lawsuits. For private organizations that are sued, the Act places several restrictions on obtaining punitive damages; for governments, the Act prohibits punitive damages. [Nugent]

9. National Vaccine Program (1986). Congress set up procedures for bringing lawsuits for injuries caused by vaccines. Under those procedures, “punitive and exemplary damages” are not permitted, 42 U.S.C.A. §300aa-15(d).

10. Civil Rights Act of 1991. Prior to 1991, punitive damages were *not* available in many employment discrimination cases. However, the 1991 Act *permits* punitive damages, 42 U.S.C.A. §1981a(b), *but limits* the size of the awards based on the size of the employer. [Nugent] No punitive damages may be gotten from a government or its agencies or subdivisions.

11. Securities Exchange Act (1934). Punitive damages are not available for violations of the Act, *Brant v. CCG Financial Corp.*, 693 F. Supp. 889 (D. Or. 1988). [Nugent, note 33]

12. ERISA (1974). “[T]he Employee Retirement Income Security Act was established by Congress to provide a uniform federal law to govern employee benefit plans. Under ERISA, any state law that relates to employee benefit plans is preempted. . . . The only damages expressly available under ERISA are basic contract damages. . . . In a 1985 case, the U.S. Supreme Court held that an ERISA plan beneficiary cannot recover punitive damages under §1132(a)(2) of ERISA which establishes liability for breach of a fiduciary duty, *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985). Most federal courts that have subsequently addressed the issue have held that punitive damages are not recoverable under the civil enforcement provisions of ERISA.”

[Nugent]

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