End Punitive Damages on Wrongful Death

In Illinois, plaintiffs are now allowed seek punitive damages from defendants in wrongful death cases under the Wrongful Death Act and Survival Act. Punitive damages previously were available only in injury cases. The law was amended in 2023 to allow in general, that the right to seek punitive damages does not survive the death of the injured party.

This new law will drastically affect wrongful death cases statewide, as it adds a new avenue of recovery and along with it the possibility to increase claims, litigation, jury verdicts, and settlement costs. This further exasperates the unpredictability of Illinois' legal system and threatens to worsen the state's reputation as a bad place to do business.

Overturned Years of Precedent

Illinois was one of 16 states that did not allow for the recovery of punitive damages in wrongful death cases. Illinois courts previously held that the right to seek or to recover punitive damages belongs only to the person who was hurt, and not to their estate.

Law changed to allow punitive damages to be recoverable in wrongful death and survival actions.

Harms Businesses

Between increased insurance premiums and the threat of litigation costs, punitive damages in wrongful death cases increase the cost of doing business in Illinois, making Illinois less attractive to businesses of all sizes, as well as job creators.

It disproportionally harms small businesses as a punitive damages verdict may have the potential to bankrupt and shut down companies that cannot absorb such a financial loss.

Companies that face injury or toxic exposure cases should recognize that the possibility of punitive damages clearly raises the stakes in any wrongful death case in Illinois.

Negatively Impacts Illinois' Legal Landscape

Rather than truly focusing on holding bad actors accountable and protecting victims, the current law includes arbitrary exemptions for certain cases. The new statute carves out exceptions so that punitive damages still will not be available in medical or legal malpractice actions or cases against state or local government entities and employees acting in their official capacities.

Along with allowing these carve outs, punitive damages can be awarded inconsistently, leading to unpredictable outcomes and inflated verdicts, further exacerbating the growing nuclear verdict issue in Illinois. This adds to the landscape of unfairness and unpredictability in our current legal system.