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WLF Urges Kentucky Appellate Court To Limit Punitive Damages Unmoored From Actual Harm (*Carey v. CSX*)

“The punitive-damages award violates both Kentucky law and the United States Constitution.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—On September 15, 2023, Washington Legal Foundation (WLF) urged the Kentucky Court of Appeals to apply well-settled Kentucky Supreme Court and U.S. Supreme Court precedent on punitive damages. In an amicus brief, WLF argues that the punitive-damages award here was not supported by the evidence and exceeds the ratio permitted by the Due Process Clause.

The case arises from a CSX investigation into potential fraud by its employees. When it learned that several employees all went to the same two doctors to receive a medical exemption from work, CSX investigated for potential wrongdoing. The two doctors sued CSX for defamation and interference with contractual relations. The jury awarded the two doctors about \$1.4 million in compensatory damages and \$21 million in punitive damages.

WLF’s brief describes how the evidence was insufficient to sustain a punitive-damages award. Under Kentucky law, the plaintiffs had to show that the defendants’ actions were oppressive, fraudulent, malicious, or grossly negligent by clear and convincing evidence. They fell well short of meeting that burden. Courts in Kentucky and around the country recognize that overzealously pursuing potential fraudsters does not warrant punitive damages and that awarding punitive damages in those cases would offend public policy. Yet CSX’s overzealousness in combatting fraud is why the jury awarded punitive damages here.

WLF’s brief also explains why the U.S. Supreme Court’s decision in *State Farm v. Campbell* requires a 1:1 cap on the ratio of punitive damages to substantial compensatory damages. That cap is the only way to ensure that companies have fair notice of their potential liability as required by the Fourteenth Amendment’s Due Process Clause. And it is why many federal courts of appeals and state courts of last resort have taken the Supreme Court at its word and applied that cap in all cases. WLF’s brief was filed with the pro bono assistance of Byron N. Miller of Thompson Miller & Simpson PLC.

Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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