

101499

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

JAMES W. HIGGINBOTHAM,

Plaintiff,

v.

Civil Action No. 05-C-12-N  
Honorable David W. Nibert

NORFOLK SOUTHERN RAILWAY  
COMPANY, a Virginia corporation;  
NORFOLK SOUTHERN CORPORATION,  
a Virginia corporation, CHARLES PAXTON,  
individually; JAMES D. FARLEY, individually;  
JOHN R. GARCIA, individually; and JAMES  
H. HATFIELD, individually,

Defendants.

ORDER DENYING  
DEFENDANTS MOTIONS FOR  
JUDGMENT AS A MATTER OF LAW,  
NEW TRIAL OR REMITTITUR

FILED  
IN MY OFFICE  
2010 MAR 24 PM 12:01

Now before the Court are defendants' motions for judgment as a matter of law, for a new trial or remittitur, and for de novo review of the punitive damage award.

At this post-trial juncture, the facts must be viewed in a light most favorable to the Plaintiff. W.Va. R.Civ.P. 50(b); *Syl. Pts. 1 & 2, Rodriguez v. Consolidation Coal Co.*, 206 W.Va. 317, 524 S.E.2d 672 (1999).

"In considering whether a motion for judgment notwithstanding the verdict should be granted, the evidence should be considered in the light most favorable to the

plaintiff...." Radec, Inc., v. Mountaineer Coal Development Co., 210 W.Va. 1, 6, 552 S.E.2d 377, 382 (2000)

This Court heard the evidence. It was sufficient to support the verdict. A brief recitation of the facts is warranted.

First, in this case, the defendants claimed that rail that had been abandoned for over twenty (20) years was the property of the Norfolk and Western Railway Company (N&W) and that the Plaintiff stole it from them. The jury heard evidence that the only reason the defendants knew the rail was being removed at all was because the Plaintiff, their long-time employee, told them. This Court ruled - a ruling unchallenged at this juncture by the defendants - that the N&W Railway did not actually own the rail. Ownership of the rail was an essential element of the grand larceny charges the defendants caused to be brought against the Plaintiff. False information concerning the ownership of the rail was given by the defendants to the Kanawha County Prosecuting Attorney's office. False testimony concerning the ownership of the rail was given to the Kanawha County Grand Jury which indicted the Plaintiff. Assistant Prosecuting Attorney Rob Schulenberg testified at trial that had he known there was an issue with respect to "ownership" of the rail allegedly "stolen," he would not have sought an indictment.

Defendants, however, continue to assert that they did not "procure" Mr. Higginbotham's prosecution as that term is used as an element of the tort of malicious

prosecution. This Court has determined that the undisputed evidence indicates that the defendants did in fact procure the prosecution.

Similarly, in what defendants have continually attempted to characterize as a "typo" or an "innocent mistake" or a "technical error," the report the defendants gave Assistant Prosecuting Attorney Schulenberg contained a statement which tied Mr. Higginbotham directly to CSX supervisor Tom Crawford, who, after he got caught, essentially admitted to falsifying a document which purported to give scrapper Charles Chandler authority to remove and sell the rail at issue. That statement in the report supplied a connection between an admitted wrongdoer - Crawford - and Mr. Higginbotham - something the defendants did not otherwise have, and something which, in fact, did not exist. The facts adduced at trial showed no connection whatsoever between Crawford and Higginbotham with respect to the rail. None. Yet, the false information given by the defendants to the prosecutor made it appear that Crawford's admitted wrongdoing could be attributable to Higginbotham and that Higginbotham had knowledge of it. The evidence at trial proved the falsity of that claim. Crawford testified that as far as he knew, Higginbotham knew nothing of his fraudulent and false activity - that he had never even spoken to Higginbotham about the rail at any time. The defendants themselves had to admit they had no evidence whatsoever that Higginbotham knew what Crawford had done, and they admitted that the statement in the report was false. Yet, the statement to the prosecuting attorney connecting Higginbotham to Crawford's wrongdoing was never corrected.

Further, the defendants gave false testimony to the grand jury which indicted Mr. Higginbotham to the effect that he received a \$10,000.00 check from Florida rail purchaser David Clark in connection with Clark's purchase of some of the the allegedly purloined rail. That sworn testimony was false - now admitted even by the defendants - but obviously it placed Mr. Higginbotham even more squarely into the mix and made it appear he was guilty of theft and was getting paid for it.

Mr. Higginbotham was indicted for the theft of rail (107 pound rail) which does not, and never did, even exist. That charge was based on false, sworn testimony offered to the grand jury by the defendants.

The defendants did not bother to tell the prosecutor that they had fired Mr. Higginbotham, and that he had been judicially cleared from "knowingly stealing rail" and reinstated to his job.

At trial, the defendants even admitted that one the indictment's charges against Florida rail purchaser David Clark had no basis in fact whatsoever. Yet, the evidence indicated that the defendants had received and reviewed the indictment even before it was presented to the grand jury.

Clearly, the scenario painted by the false report and testimony made it appear to the prosecutor and the grand jury that Plaintiff Higginbotham was right in the thick of the wrongdoing. Yet, the defendants adduced no evidence whatsoever to support that conclusion.

The evidence at trial indicated that the defendants had a motive to get Mr. Higginbotham indicted and convicted to take him off their payroll. Their efforts to fire

him had been rebuffed by the labor board and they set about to go through the back door to take his job when the front door had been slammed in their faces. They decided to "go for the gold" and try to put Mr. Higginbotham in jail for crimes they knew or should have known he hadn't committed. Despite the overwhelming evidence at trial that Mr. Higginbotham was utterly innocent, the defendants persisted in their claim that he was guilty of the crimes they had caused to be brought against him.

The facts recited hereinabove are but a few of those proved at the trial of this case. They are sufficient to support the jury's verdict.

The defendants contend that they did not procure Mr. Higginbotham's prosecution. Second, they argue that, as a matter of law, there was in fact probable cause for Mr. Higginbotham's prosecution. Third, they claim Plaintiff did not "demonstrate malice." Fourth, they continue to assert that they are entitled to rely on the "absolute defense" of advice of counsel. Fifth, they argue that they are immune from suit based upon the doctrine of qualified immunity and finally, they claim that the damage awards were not supported by the evidence. In rulings placed upon the record, the Court has already ruled against the defendants on all these assertions with the exception of their complaints about damages. This Court's prior rulings are incorporated by reference herein.

#### *A. PROCUREMENT*

Defendants claim that the court erred in finding as a matter of law that the defendants procured Plaintiff's prosecution.

Essentially, if the defendants' position on this issue were to be adopted, any definitive ruling would effectively eliminate a cause of action for malicious prosecution from West Virginia jurisprudence. In the State of West Virginia, absent presentation of a case to the grand jury by a prosecutor, an indictment cannot be obtained. Although defendants do not ever elucidate the precise nature of their position as to what exactly "procurement" in this jurisdiction should legally be, they simply claim that what they did was not it. The Court here applied the law of this state in ruling that "procurement" means "procurement." *See, e.g., Vinal v. Core*, 18 W.Va. 1 (1885). "By instigated and procured is meant instigation and procurement in the ordinary meaning of the language." *Id.* at 25. To have permitted the defendants to assert and argue at trial that they did not "instigate and procure" Mr. Higginbotham's prosecution would have been permitting them to assert and argue a position contrary to law. The fact of the matter is that they instigated and procured Mr. Higginbotham's prosecution - plain and simple

Defendants assert that it was not them who "instigated and procured" Mr. Higginbotham's prosecution, but instead the Assistant Prosecuting Attorney of Kanawha County, Robert Schulenberg, "instigated and procured" the prosecution as a matter of law. That claim is simply specious. Failing that, the defendants assert that the issue was one of fact for the jury. Thus, the defendants are asserting that (1) the issue is one of law for the court; but, (2) if they lose it as a question of law, then it is a question of fact.

The evidence at trial demonstrated that the defendants "investigated" the alleged crimes, appeared before a judicial officer and obtained warrants for his arrest, prepared a report containing false information concerning Mr. Higginbotham's involvement in the alleged crimes, gave that report to the Assistant Prosecuting Attorney knowing he would rely upon it, called his office repeatedly to find out when the case would be presented, met with the prosecutor, reviewed the indictment before it was presented, appeared before and gave false testimony to the grand jury which rendered an indictment against the Plaintiff, and now contend they did not "procure" his prosecution. No other police agency, entity or person was involved in instigating or procuring the prosecution of Mr. Higginbotham other than the defendants. The prosecuting attorney merely did his job as required by the law in this state. Absent his presentation of the case to the grand jury, no indictment could have ever been obtained.

Defendants' attempts to distinguish the West Virginia cases on the issue reveal the fallacy of their argument. Citing Radochio v. Katzen, 92 W.Va. 340, 114 S.E.2d 746 (1922), for the proposition that "there must be a direct correlation between the actions of the person alleged to have procured the prosecution and the prosecution itself" defendants' then assert there was no such connection here. In this Court's opinion, no reasonable person could view the facts of this case and conclude that the defendants did not instigate and procure the prosecution of Mr. Higginbotham - there are no facts to the contrary. That is why the Court ruled, as it did, that the defendants instigated and procured the prosecution.

Other West Virginia decisions, Sudnick v. Kohn, 81 W.Va. 492, 94 S.E. 962 (1918), McNair v. Erwin, 84 W.Va. 250, 99 S.E.454 (1919), Hunter v. Beckley Newspapers, 129 W.Va. 302, 40 S.E.2d 332 (1946), and Thomas v. Beckley Music & Electric Co., 246 W.Va. 764, 123 S.E.2d 73 (1961), likewise lend the defendants no solace. None of those decisions change the basic Vinal proposition that "instigation and procurement" means "instigation and procurement" in the ordinary sense of the words. Applying that law to the facts of this case the Court ruled that the defendants "instigated and procured" Mr. Higginbotham's prosecution. As stated hereinabove, to adopt the defendants' position would be to obliterate the cause of action for malicious prosecution from the state's jurisprudence since only a prosecutor can obtain an indictment in this state. Interestingly, the defendants recognize that in Thomas, supra., "The Supreme Court noted that the criminal prosecution was 'admittedly set in motion by defendants'." *Id.* at 79. Thus, procurement was not at issue in this case." Here, the prosecution of Mr. Higginbotham was "set in motion" by the activities of the defendants.

Similarly, defendants' reliance upon Truman v. Fidelity and Casualty, 146 W.Va. 757, 123 S.E.2d 59 (1961) is misplaced because it is obviously factually distinguishable. Here, defendants' agent *did testify* (falsely) to the grand jury which indicted Mr. Higginbotham. Other cases, i.e., Morton v. C&O Railway Co., 184 W.Va. 64, 399 S.E.2d 464 (1990) and Pote v. Jarrell, 186 W.Va. 369, 412 S.E.2d 770 (1991), undercut defendants' position here on a number of issues. The Pote trial court apparently permitted the "procurement" issue to go to the jury, but there is no indication that resolution as a matter of law was requested at trial. While defendants contend that the

court should not have ruled on the issue as a matter of law, they have not identified "facts" - other than the involvement of Assistant Prosecutor Schulenberg - which could have been in dispute on the issue. Schulenberg's conduct, as a matter of law, does not relieve the defendants of liability.

Defendants' reliance on cases from other jurisdictions is similarly misplaced. None of them change the law in West Virginia.

#### **B. PROBABLE CAUSE**

Defendants merely rehash their summary judgment arguments concerning probable cause and ask the Court to now rule that there was probable cause to indict Mr. Higginbotham as a matter of law, even though the Court has already ruled it was a question of fact and the jury here found there was no probable cause. The Court fully evaluated this issue both pre-trial and at trial, the jury was properly instructed and there is no valid new reason proffered by the defendants to change the prior ruling, now confirmed explicitly by jury verdict.

The indictment against Mr. Higginbotham was *summarily dismissed* by the Circuit Court of Kanawha County, West Virginia. That fact alone would undercut the argument now posited, at least with respect to a ruling as a matter of law. Certainly, taken together with all of the other facts in the case - the false report, the false sworn grand jury testimony, the ownership issue, questions about the value of the rail involved and the like - the issue was one for jury resolution.

### *C. MALICE*

Likewise, defendants' argument that Plaintiff failed to prove malice falls of its own weight. The jury found malice. The evidence supports that finding.

Plaintiff contended at trial, and the jury apparently found, that defendant tried to fire the Plaintiff, was unable to do so lawfully because of his union protections, and then set about to prosecute him criminally. That contention, apparently accepted by the jury, is sufficient to support a finding of malice. Defendants did not tell the prosecuting attorney that they had fired Mr. Higginbotham and that he had been judicially cleared of "knowingly stealing rail" - the very rail in question - and reinstated.

Now, defendants assert that "They (defendants' agents) had no possible reason to want to see the Plaintiff prosecuted other than their belief that he and others were engaged in criminal wrongdoing." That was their argument at trial and it was rejected by the jury. Defendants' still refuse to acknowledge that the "sinister" or "improper" motive the jury attributed to them was to rid their payroll of one William J. Higginbotham. The evidence before the jury was clearly sufficient - more than sufficient - to permit that finding and to support the denial of a ruling on the issue as a matter of law.

Again defendants seek to have the Court invade the province of the jury and ask that it rule as a matter of law that there was no evidence of "malice." The Court declined so to do.

### *D. ADVICE OF COUNSEL*

Defendants continue to ignore the exception to the "advice of counsel" defense upon which they continue to attempt to rely for "false information." They admitted at trial that false information - directly connecting Mr. Higginbotham to admitted wrongdoer CSX Roadmaster Crawford - was given to the prosecutor. They admitted at trial that they told the prosecutor that the rail was owned by N&W Railroad. The Court has ruled that N&W did not own the rail. The defendants do not now contest that ruling. Thus they gave "false information" to the prosecutor and the "advice of counsel" defense remains unavailable to them. Similarly, the defendants did not bother to tell the prosecutor that Mr. Higginbotham had been fired, judicially cleared of knowingly stealing the very rail in question, and reinstated to his job.

Since the defendants did not make a "full and fair disclosure" of all of the facts to the prosecutor, and indeed provided him false information regarding Mr. Higginbotham's involvement in the alleged offenses for which he was indicted, this defense is unavailable.

This issue was fully briefed and argued on summary judgment. The Court readopts its ruling on that motion. Defendants raise nothing new. Plaintiff proved at trial what Plaintiff told the Court in summary judgment briefs Plaintiff would prove at trial. *See, Wilmer v. Rosen*, 102 W.Va. 8, 135 S.E.225 (1926).

The jury was properly instructed on this issue (Defendants' Instruction No 22) and it found against the defendants. The evidence supports that finding.

#### ***E. QUALIFIED IMMUNITY***

Defendants' instruction on this issue was given to the jury and the jury rejected defendants' claim. Defendants now complain that the court should have "permitted the jury to specifically answer an interrogatory" on the issue.

The defendant did not submit a proper verdict form in this case and thus waived any such error.

In any event, defendant does not explain why, when the issue was given to the jury in a proper instruction, a special interrogatory would have changed anything. The jury is presumed to have rejected the claim by its verdict.

At bottom, the issue raised is premised upon an assumption of "good faith" by the officers involved. The jury, by its verdict for punitive damages, has indicated that the defendants' acted with malice and not in good faith.

The defendants failed at trial to offer sufficient proof that they were entitled to rely upon qualified immunity because they did not establish that they had filed the necessary paperwork in Kanawha County, West Virginia, allowing them to act as special Railroad police officers. *See, W.Va. Code 61-3-41.*

Accordingly, this assignment is overruled.

#### **F. DAMAGES**

It is apparent from the arguments posited that the defendants have no real substantive complaint about the compensatory damages awarded, cite no authority for the propositions asserted, and the Court believes that the compensatory damage award is entirely appropriate under the facts and circumstances of the case. The jury heard ample evidence of anguish, distress, humiliation and embarrassment to support the

award. Apparently, defendants' failed to take cognizance of the testimony reflecting that Plaintiff was labeled a "thief" in the workplace, made fun of and ridiculed. There is no basis to set aside or reduce the compensatory award.

Defendants also claim that Plaintiff was not entitled to an award of punitive damages.

Defendants have requested *de novo* review of the jury's punitive damage award and have requested that the Court grant a remittitur on the verdict. The Court finds that the punitive damage verdict was warranted and it is hereby approved by the Court. The Court further finds that remittitur is inappropriate under the facts and circumstances of this case.

The Court has visited this issue on a number of prior occasions in this case, first with respect to defendants' motion for summary judgment, and then at trial at the conclusion of plaintiff's case and at the conclusion of all of the evidence. The Court ruled, on all three occasions, that an award of punitive damages would be warranted should the jury find such an award appropriate. The jury did. This Court finds no basis to disturb their verdict - a rather modest one rendered against a multi-*billion* dollar corporation. The verdict represents a miniscule percentage of the defendants' net worth.

The Court must evaluate the verdict and award in terms of the factors outlined in Garnes v. Fleming Landfill, Inc., 186 W.Va. 656, 413 S.E.2d 897 (1991).

Defendants first claim that an award of punitive damages in this case was unwarranted at all. The Court heard the evidence, permitted the issue to go to the jury,

and the jury determined, under proper instructions about which the defendants do not complain, that an award of punitive damages was appropriate. All of the arguments defendants now advance were contained in their instructions to the jury and the jury rejected those arguments. To support their position that no punitive damage award should have been made, defendants apparently persist in their attempts to convince the court that their conduct was all "an innocent mistake," a "typo," a "technical error" and in "good faith." The jury rejected those claims and the Court rejects them as well.

The jury was entitled to find, and apparently did so find, that the defendants, having failed in their effort to fire Plaintiff Higginbotham in the legal manner required of them, undertook to obtain his indictment and prosecution for crimes they had no evidence he committed, to remove him from the payroll once and for all. In the light most favorable to the Plaintiff, the facts indicate that defendants prepared a report of "investigation" which contained materially false information concerning the nature and extent of Mr. Higginbotham's involvement in the theft of rail, gave that report to the Assistant Prosecuting Attorney of Kanawha County, West Virginia, withheld other pertinent information - including that they had fired Mr. Higginbotham and that he had been reinstated upon a finding that he did not knowingly steal the rail - and gave false sworn testimony to a grand jury which then indicted Mr. Higginbotham and exposed him to up to thirty (30) years in jail. The charges against him were publicized, he was publicly ridiculed and embarrassed, and forever branded a "thief" in the eyes of those who saw the charges but didn't know of their summary dismissal by a Circuit Judge. He faced uncertain times for over a year while he was out of work and

wondering if he would ever be cleared of charges for which there was no basis whatsoever. The jury found there was no probable cause for the prosecution and that the defendants acted with malice. The evidence supports those findings. Defendants' continue to assert "evidence" they claim shows an absence of malice and the presence of probable cause. They had a full and fair opportunity to, and did, present those claims to the jury. The jury rejected them.

At this stage, therefore, it is established that the defendants acted with malice. Defendants' continued insistence upon minimizing their conduct, attempting to explain it away, and asserting their "innocence" is misplaced and inappropriate.

The Court heard the evidence. It was clearly sufficient to support a verdict of punitive damages.

#### ***DUPLICATIVE OF THE COMPENSATORY AWARD***

Defendants contend that the "malicious prosecution" here is "subsumed" by an action for "intentional infliction of emotional distress" and thus because it is a "lesser" claim it cannot support a verdict for both emotional distress damages and punitive damages. Cf. Hines v Hills Dept. Store, 193 W.Va. 91, 454 S.E.2d 385 (1994). No cause of action for intentional infliction of emotional distress was asserted or tried in the matter before the Court.

In that regard, however, it is noteworthy that the compensatory damage verdict here was comprised of a number of components - not just damages for "emotional distress." The award in the matter at bar also included damages for "annoyance and

inconvenience, humiliation and embarrassment" and damages for the harm caused to Mr. Higginbotham's reputation.

The defendants never requested that the court separate those items and elements of damages on the verdict form, and since defendants do not now complain about the form of the verdict itself, they apparently recognize that any claim of error in that regard has been waived. The evidence at trial fully supported the damage award for those elements and obviously the jury relied both on the direct and circumstantial evidence - as they were entitled to do - in reaching their verdict. Thus defendants are complaining about a damage award for more than "emotional distress" and cannot identify what precise amount of the award is attributable to that element of damage.

Defendants, essentially, urge the court to "uncompensate" Mr. Higginbotham for the permanent scar on his reputation left by false allegations that he was a felon and a thief. Unlike the cases cited by the defendants, this is not a wrongful discharge employment case and thus the West Virginia Supreme Court's of Appeals' oft-stated concern about the nature of the damages recoverable and the evidentiary basis therefore in actions of that genre is absent here.

Defendants cite no genuine authority which supports their contention and thus it should be rejected. Certainly, the punitive damages awarded here would not be duplicitous for the damages afforded Mr. Higginbotham to compensate him for the permanent impairment of his good reputation for being law-abiding, honest and a man of integrity. Since the defendants did not ask that the jury specify the sums awarded for each element of compensatory damages, this claim of error was waived.

## FACTORS

Defendants assert that their conduct was not sufficiently reprehensible to support the punitive damage award. The Court disagrees.

The BMW v. Gore, 517 U.S. 559 (1996), considerations argued by the defendants all offer little support for their claim that the punitive damage award was improper. It is noteworthy that the defendants cannot really claim the award was excessive, in view of all of the circumstances.

The defendants pursued their deceitful endeavor over a four or five year period, leaving Plaintiff Higginbotham without a job or health insurance for a full year for him and his family. They knew their actions were causing harm and would likely cause harm - Mr. Higginbotham went to bed every single night for a substantial period of time with three felony charges against him, wondering if he would be required to do thirty years in jail. He was financially vulnerable - out of work for over a year. The evidence at trial clearly indicated that the defendants had engaged in retaliatory conduct against union leaders and members who dared fight for their employment rights on other occasions. To this day, even after the jury verdict, the defendants continue to deny wrongdoing, and have still not to this day apologized to Mr. Higginbotham for what they put him through. Indeed, they continue to insist he is guilty of the crimes they falsely accused him of committing. The jury determined that the defendants acted with deceit and malice - the defendants' claims of "mistake" or "accident" were proffered in full to the jury and rejected.

To this day, the defendants have shown no remorse whatsoever.

Thus the Gore analysis weighs heavily in favor of sustaining the punitive damage award.

Further, the defendants' conduct in this litigation was likewise questionable in some respects. The defendants claimed ad nauseum that the N&W Railway "owned" the purloined rail when in fact it did not. That fact only became apparent when they were pressed on the issue and finally had to admit the true ownership. Even after the Court ruled, defendants still persisted in trying to claim otherwise. A similar tact was taken by the defendants with respect to their officers' compliance with W.Va. Code 61-3-41. Despite their insistence throughout the litigation and trial that the appropriate paperwork had in fact been filed with the Kanawha County Clerk, when push came to shove at trial the defendants were unable to produce sufficient evidence of same.

In sum, defendants' conduct here was sufficiently reprehensible to sustain the punitive damage award.

The Court similarly rejects defendants "ratio" argument, finds that it is three to one, and thus perfectly acceptable under any standard by any court. Given the jury's findings, the wealth of the defendants, the nature of the testimony by the defendants' witnesses and the circumstances of the case, the Court would be well justified in finding that the jury showed admirable restraint. As stated hereinabove, the verdict is but a miniscule of a percentage of the defendants' net worth.

Despite its claims that it did not "profit" from the wrongdoing, it is clear that the defendant did not pay Mr. Higginbotham his salary and benefits for a year and expected to profit even more should it have been successful in its endeavor to rid him

from their payroll once and for all. Further, defendants' took possession of ten thousand dollars (\$10,000.00) worth of rail it apparently did not and does not own and have never given it back to Mr. Higginbotham.

This is not a case where the defendants acted "with extreme negligence or wanton disregard" but with no actual intention to cause harm. It is established, by the jury's verdict, that the defendants here acted *with malice*. Thus, defendants' claim that a 5 to 1 ratio would be an "outer limit" (even though it was not exceeded in this matter) is a misplaced argument.

Having fully considered all of the relevant factors, the Court believes the punitive damage award should not be disturbed.

Accordingly, this Court finds that the verdict is not constitutionally infirm.

While defendants complain that the court should not have admitted the SEC report, an adequate evidentiary basis for admission was laid and the Court permitted only limited use. Any error in that regard would be considered harmless and certainly not prejudicial since the report indicated profits of billions of dollars and the damage award is miniscule in comparison.

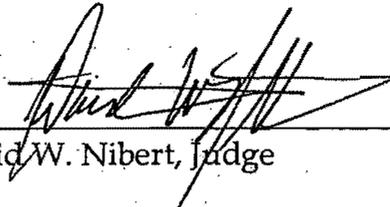
The defendant attempts to "minimize" the \$5,000.00 in damages proven by the Plaintiff in this matter. While that sum may be small in some contexts, most ordinary people cannot afford to make a five thousand dollar outlay for a lawyer without it hurting them. The defendants litigated this case vigorously and persisted in denying a number of key facts before being forced to admit them.

In sum, the punitive damage award in this case was warranted, was not excessive and was not constitutionally inappropriate. The defendants made full use of their due process and in fact obtained a full and fair trial. Under all of the facts and circumstances in this case, the verdict must be sustained.

This Court adopts by reference all of its previous rulings on the issues raised, made pre-trial, at the summary judgment stage, and during trial. Having fully considered the arguments of the defendants, the Court finds their motions without merit. Accordingly, the same are ORDERED DENIED.

The Clerk is directed to mail a certified copy of this Order to all counsel of record.

ENTER THIS the 24 day of March, 2010.

  
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David W. Nibert, Judge

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