
Case No. 1110353

IN THE
SUPREME COURT OF ALABAMA

MARY LEILA SCHAEFFER and
the ESTATE OF EMMA GLASS
BEASLEY,

Appellants,

v.

WILLIAM POELLNITZ, as
ADMINISTRATOR OF THE ESTATE
OF EDWIN G. YOUNG, ET AL.,

Appellees.

On Appeal from the Circuit
Court of Perry County,
Case No. CV-2005-040

BRIEF OF AMICUS CURIAE
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STATEMENT OF THE INTEREST OF AMICUS CURIAE

The Alabama Defense Lawyers Association ("ADLA") is a non-profit association of approximately 1,100 Alabama lawyers who devote a substantial portion of their professional practice to the defense of civil lawsuits. Founded in 1964, ADLA's purpose includes promoting improvement in the administration and quality of justice. Consistent with ADLA's stated purpose, the Association, by and through its Amicus Curiae Committee, often seeks to participate in cases that involve important questions of law to assist the Court in its consideration and resolution of those cases. In its brief, ADLA addresses what it considers to be significant questions of law.

ADLA and its undersigned counsel have no pecuniary interest in this case and have no professional relationship with the parties. The appellants have consented to the filing of this brief in support of the issues addressed by ADLA on appeal. ADLA is grateful for the opportunity to submit the following authorities and argument for the Court's consideration.

**STATEMENT OF THE ISSUES
ADDRESSED BY AMICUS CURIAE**

- I. Whether punitive damages may be assessed against the estate of a deceased tortfeasor even though the punishment purpose of punitive damages is eliminated by the death of the wrongdoer such that the punishment would be imposed upon the innocent heirs.
- II. Whether a trial court may go behind a jury's verdict and reallocate the punitive damage award among the defendants based upon the trial court's own judgment and speculation as to the jury's intent.

SUMMARY OF THE ARGUMENT

Punitive damages may not be assessed against the estate of a deceased tortfeasor. In Alabama, the death of the tortfeasor extinguishes liability for punitive damages, because the assessment of punitive damages against the innocent heirs to the tortfeasor's estate does not serve the punitive and deterrent purposes of punitive damages. This rule is followed by an overwhelming majority of jurisdictions and is based in sound policy considerations. Shifting to the heirs of a deceased tortfeasor the responsibility of bearing the punishment for a wrongful act is inequitable. This case presents the Court with the opportunity to reaffirm longstanding public policy and black letter principles of Alabama law: punitive damages may not be imposed against a deceased tortfeasor's estate, except in wrongful death cases, which are specifically excepted from the rule by statute.

The Court also has the opportunity to address the not-too-distant mandate that the trier of fact individually assign punitive damages against each defendant, based on each defendant's own wrongful conduct, in multi-defendant

actions (except wrongful death cases). This case is particularly unusual in that the jury failed to assess punitive damages individually against each defendant; instead, the jury awarded each of the three plaintiffs \$200,000 in punitive damages, joint and several against the two defendants. The trial court then attempted to correct that omission, apparently speculating that the jury determined that the defendants were equally culpable and intended to assess against each of the defendants one-half the punitive damages awarded. The trial court's ex post facto reassessment and reallocation of the punitive damages was improper and violated the defendants' rights to trial by jury and due process.

ARGUMENT

I. Punitive damages cannot be assessed against the estate of a deceased tortfeasor.

The general rule, in Alabama and elsewhere, is that "the death of [a] tortfeasor terminates liability for punitive damages." Restatement (Second) of Torts § 926(b) (1979). The Alabama Supreme Court has long recognized that "when the wrongdoer dies before the action is brought to trial, and the action survives against his personal representative, only compensatory damages may be recovered." Meighan v. Birmingham Terminal Co., 51 So. 775, 778 (Ala. 1910), overruled on other grounds by Henderson v. Ala. Power Co., 627 So. 2d 878, 892-93 (Ala. 1993) (noting that while the holding in Meighan was correct, some of the dicta was incorrect: "[T]he statement in Meighan that 'the state had the right to remit punitive damages' . . . is not only unsupported by, but is contrary to, § 104(28)."), overruled by Ex parte Apicella, 809 So. 2d 865 (Ala. 2001) ("To the extent [it] held that § 11 restricted the Legislature from removing from the jury the unbridled right to punish, Henderson [was] wrongly decided.").

The general rule prohibiting punitive damages against the estate of a wrongdoer makes sense in light of the purpose underlying any award of punitive damages in Alabama. "Punitive damages are not awarded because the injured party is entitled to them as a matter of right; they are awarded as a punishment to the wrongdoer and to deter him and others in the same or similar situation from such wrongdoing in the future." City Bank of Ala. v. Eskridge, 521 So. 2d 931, 933 (Ala. 1988) (citing D. Corley & C. Gamble, Ala. Law of Damages, § 4:1 (1982)); see also Ex parte Vulcan Materials Co., 992 So. 2d 1252, 1260 (Ala. 2008) (stating that the central purpose of punitive damages in Alabama "is not to compensate the plaintiff but to *punish the wrongdoer* and to deter the wrongdoer . . . from committing similar wrongs in the future"); accord Green Oil Co. v. Hornsby, 539 So. 2d 218, 222 (Ala. 1989); C. Gamble, Ala. Law of Damages, § 4-7; Restatement (Second) of Torts § 908 cmt. a (1979); 1 J.D. Lee & Barry A. Lindahl, Modern Tort Law § 21.35 (Rev. Ed. 1994); 1 James D. Ghiardi & John Kircher, Punitive Damages Law & Practice § 9.10 (1987).

The death of the wrongdoer prevents the wrongdoer from being punished or deterred by a punitive damage award -

thereby eliminating the purpose of imposing punitive damages. Doe v. Colligan, 753 P.2d 144, 145 (Alaska 1988) (“[T]he exemplary purpose of punitive damages is not well served by imposing damages on any other than the actual wrongdoer.”); cf. Resolution Trust Corp. v. Mooney, 592 So. 2d 186 (Ala. 1991) (“[P]unitive damages are imposed to punish the wrongdoer and deter others. Where the wrongful party is in receivership and the damages are to be paid by innocent creditors, punitive damages create an inequitable result and are therefore improper.”). The purpose of imposing punitive damages thus having been eliminated, the general rule provides that punitive damages are not recoverable against the estate of a deceased tortfeasor.

Following the rationale that the purpose of punitive damages to punish and deter the wrongdoer can be accomplished only if the wrongdoer is alive, almost all jurisdictions follow the general rule prohibiting the imposition of punitive damages against the estate of a wrongdoer who dies prior to the entry of judgment. See, e.g., Doe v. Colligan, 753 P.2d 144 (Alaska 1988); Evans v. Gibson, 31 P.2d 389 (Cal. 1934); Sanchez v. Marquez, 457 F. Supp. 359 (D. Colo. 1978); Jonathan Woodner Co. v. Breeden,

665 A.2d 929 (D.C. 1995); Lohr v. Byrd, 522 So. 2d 845 (Fla. 1988); Sightler v. Transus, Inc., 430 S.E.2d 81 (Ga. Ct. App. 1993) (citing Morris v. Duncan, 54 S.E. 1045 (Ga. 1906)); Idaho Code § 5-327(1); Crabtree v. Estate of Crabtree, 837 N.E.2d 135 (Ind. 2005); Wolder v. Rahm, 249 N.W.2d 630 (Iowa 1977); Fehrenbacher v. Quackenbush, 759 F. Supp. 1516 (D. Kan. 1991); Stewart v. Estate of Cooper, 102 S.W.3d 913 (Ky. 2003); Johnson v. Levy, 47 So. 422 (La. 1908); Prescott v. Knowles, 62 Me. 277 (Me. 1874); Wilkins v. Wainright, 53 N.E. 397 (Mass. 1899); Thompson v. Estate of Petroff, 319 N.W.2d 400 (Minn. 1982); Hewellette v. George, 9 So. 885 (Miss. 1891); Tietjens v. Gen. Motors Corp., 418 S.W.2d 75 (Mo. 1967); Allen v. Anderson, 562 P.2d 487 (Nev. 1977); Jaramillo v. Providence Wash. Ins. Co., 871 P.2d 1343 (N.M. 1994); Gordon v. Nathan, 352 N.Y.S.2d 464 (N.Y. 1974); McAdams v. Blue, 164 S.E.2d 490 (N.C. App. 1968); Mongold v. Estate of Gilbert, 758 N.E.2d 1245 (Ohio Ct. of Com. Pl. 2000); Morriss v. Barton, 190 P.2d 451 (Okla. 1947); Ashcraft v. Saunders, 444 P.2d 924 (Or. 1968); Aldrich v. Howard, 8 R.I. 125 (R.I. 1864); Olson-Roti v. Kilcoin, 653 N.W.2d 254 (S.D. 2002); Hays v. Gill, 390 S.W.2d 213 (Tenn. 1965); In re Estate of Garza,

725 P.2d 1328 (Utah 1986); Dalton v. Johnson, 129 S.E.2d 647 (Va. 1963); Vt. Stat. tit. 14, § 1454; McWilliams v. Bragg, 3 Wis. 424 (Wis. 1854); Parker v. Artey, 889 P.2d 520 (Wyo. 1995). See also 25 C.J.S. Damages § 125(3); 30 A.L.R. 4th 707 §§ 3, 4.

Only a small handful of jurisdictions allows punitive damages to be awarded against the estate of a wrongdoer. Haralson v. Fisher Surveying, Inc., 31 P.3d 114 (Ariz. 2001); Estate of Farrell v. Gordon, 770 A.2d 517 (Del. 2001); Penberthy v. Price, 666 N.E.2d 352 (Ill. App. Ct. 1996); Tillett v. Lippert, 909 P.2d 1158 (Mont. 1996); G.J.D. v. Johnson, 713 A.2d 1127 (Pa. 1998); Hofer v. Lavender, 679 S.W.2d 470 (Tex. 1984); Perry v. Melton, 299 S.E.2d 8 (W. Va. 1982). While these courts correctly acknowledge that the alleged wrongdoer cannot be punished or deterred in cases where the wrongdoer is deceased, they nevertheless rationalize the imposition of punitive damages upon the estate of the wrongdoer by reference to the "general deterrence" for other wrongdoers and state-specific policies that allow punitive damages to provide additional compensation for victims. See, e.g., Haralson v. Fisher Surveying, Inc., 31 P.3d 114 (Ariz. 2001) (allowing

punitive damages based on the "larger societal effects" of punitive damage awards); Penberthy v. Price, 666 N.E.2d 352 (Ill. App. Ct. 1996) (allowing punitive damages based on general deterrence and the "strong public policy against mixing alcohol and automobiles"); Hofer v. Lavender, 679 S.W.2d 470 (Tex. 1984) (allowing punitive damages based on the following reasons: they are meant to punish, set an example, deter, reimburse for inconvenience and attorney fees, and serve the overall public good); Perry v. Melton, 299 S.E.2d 8 (W. Va. 1982) (allowing punitive damages based on the West Virginia policy that allows for punitive damages to provide additional compensation for victims).

The minority approach is contrary to the views consistently expressed by this Court on the propriety of punitive damage awards. This Court has never recognized additional compensation for the victim as a proper ground to justify the assessment of punitive damages against a wrongdoer. Indeed, the Court has repeatedly held that punitive damages are not to compensate the victim. See, e.g., Ex parte Moebes, 709 So. 2d 477, 478 (Ala. 1997) ("[P]unitive damages serve not to compensate the plaintiff but to punish the wrongdoer."); Maryland Cas. Co. v.

Tiffin, 537 So. 2d 469, 471 (Ala. 1988) (“[P]unitive damages are not to compensate a victim for loss.”); Birmingham Waterworks Co. v. Keiley, 56 So. 838, 841 (Ala. 1911) (“Punitive damages are damages *over and above* such sum as will compensate a person for his actual loss . . . as a *punishment* to the wrongdoer, and to deter him and others in *similar* businesses from such wrongdoing in the future.”).

Likewise, general deterrence of other similarly situated potential tortfeasors has never been the primary purpose of punitive damages in Alabama. See, e.g., Ex parte Vulcan Materials Co., 992 So. 2d 1252, 1273 (Ala. 2008) (noting that the propriety of a punitive damage award can be evaluated only by considering “the amount of damages necessary to punish *the particular defendant*” accused of the particular wrongdoing); S. Life & Health Ins. Co. v. Turner, 586 So. 2d 854, 856 (Ala. 1991) (“Punitive damages are . . . [f]or the purpose of punishing that wrongdoer for the wrong that he has perpetrated[,]. . . [a]nd secondly, to make an example out of him . . . to prevent him or other people similarly situated from doing the same sort of wrong in the future.”); Ala. Code § 6-11-21(e) (“[N]o defendant

shall be liable for any punitive damages unless that defendant has been expressly found by the trier of fact to have engaged in conduct . . . warranting punitive damages, and such defendant shall be liable only for punitive damages commensurate with that defendant's own conduct." (emphasis added)). While general deterrence of others is a natural side effect of punishing and deterring the wrongdoer in a particular case, the main goal of punitive damages is to punish that wrongdoer for the act(s) giving rise to the claim and to deter that wrongdoer from behaving in the same way again.¹

The general rule adopted in Alabama and the overwhelming majority of other jurisdictions is the better reasoned and fairer approach. Alabama public policy dictates that punishment be felt by the wrongdoer only; this policy is at the core of our philosophy of justice and it is expressed by the legislature in the punitive damage

¹ In fact, to impose punitive damages based solely on societal deterrence would be patently unfair to the defendant against whom such damages are levied. BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575-76 (1996) (noting that the amount of punitive damages awarded must be in proportion with the culpability of the tortfeasor); Ala. Code § 6-11-21(e) (stating that a "defendant shall be liable only for punitive damages commensurate with that defendant's own conduct").

statute. Ala. Code § 6-11-21(e) (“[N]o defendant shall be liable for any punitive damages unless that defendant has been expressly found by the trier of fact to have engaged in conduct . . . warranting punitive damages, and such defendant shall be liable only for punitive damages commensurate with that defendant’s own conduct.” (emphasis added)); Merrell v. Ala. Power Co., 382 So. 2d 494, 497 (Ala. 1980) (“[T]he whole policy of our laws, as of every civilized system of jurisprudence, is utterly at war with the idea of vicarious punishment.” (internal quotation marks omitted)).

The effect of a punitive damage award against an estate is that the punishment ultimately will be borne by the heirs, who are innocent of the wrongdoing for which punitive damages are imposed. Such affirmative injustice is certainly contrary to the purposes for which punitive damages are allowed in the first place—to punish and deter the wrongdoer. See Jonathan Woodner Co. v. Breeden, 665 A.2d 929, 939 (D.C. 1995) (noting that if courts were to allow punitive damages based on deterrence alone, “it would be justified to require a decedent’s family to pay a fine or be imprisoned for the decedent’s criminal conduct. With

the wrongdoer dead, there is no one to punish and to punish the innocent ignores our basic philosophy of justice").

Thus, this Court held in an analogous case that a plaintiff could not recover punitive damages from a bank that had been placed in receivership before suit, because the bank no longer existed. Resolution Trust Corp. v. Mooney, 592 So. 2d 186 (Ala. 1991). The Court reasoned that the punishment purpose of punitive damages would not be served by imposing punitive damages upon a nonexistent entity and that it would be patently unfair to shift the punishment to the innocent creditors of the bank. Id. Likewise, where the alleged tortfeasor is deceased, the punishment purpose of punitive damages will not be served by imposing punitive damages upon the tortfeasor's estate, and it would be patently unfair to shift the punishment to the innocent heirs.

Wrongful death actions are the only exception to the general rule recognized in Alabama. Ellis v. Zuck, 546 F.2d 643, 644-45 (5th Cir. 1977) (citing Shirley v. Shirley, 73 So. 2d 77 (Ala. 1954)). Wrongful death claims were created by statute, and by statute, wrongful death actions survive against the estate of the wrongdoer in the event the

wrongdoer dies before judgment, even though the only damages recoverable are punitive damages. Ala. Code § 6-5-410(b); Ivey v. Wiggins, 159 So. 2d 618, 620 (Ala. 1964).

All cases interpreting Alabama law are consistent in recognizing that the general rule prohibiting the imposition of punitive damages on the estate of a deceased tortfeasor applies in all circumstances except wrongful death actions; no other exceptions to the general rule have been recognized. The one outlier is a case from the Old Fifth Circuit. Ellis v. Zuck, 546 F.2d 643, 644-45 (5th Cir. 1977). The plaintiff in Ellis sued and sought punitive damages against the estate of the alleged tortfeasor for fraud. Id. at 644. The Court noted that “[i]n almost all jurisdictions it is held that punitive damages may not be awarded against the estate of a wrongdoer who has died prior to the entry of judgment.” Id. The Court then considered the punitive damage jurisprudence of Alabama. It turned to this Court’s decision in Shirley, a wrongful death action brought against the estate of the deceased tortfeasor. Id. (citing Shirley, 73 So. 2d at 79). As the Fifth Circuit noted, the plaintiff in Shirley was allowed to pursue punitive damages—the only damages available in a

wrongful death case in Alabama—against the estate of the deceased tortfeasor, because the Alabama legislature has specifically provided for the survival of wrongful death actions against the estate of the wrongdoer. Id. From the statutorily mandated survival of wrongful death claims against the estate of a tortfeasor the Fifth Circuit extrapolated that any claim for punitive damages must survive the death of the tortfeasor no matter the underlying cause of action. Id. at 644-45.

The Old Fifth Court incorrectly interpreted Shirley as suggesting that Alabama would allow punitive damages against the estate of a deceased tortfeasor no matter the underlying cause of action just because Alabama statutes provide for the survival of wrongful death actions. That interpretation is inaccurate for a number of reasons.

First, Shirley was a wrongful death case that falls within the statutory exception to the general rule prohibiting the assessment of punitive damages against the estate of a deceased tortfeasor. Any apparent indication in Shirley that punitive damages may be recovered against the estate of a deceased tortfeasor outside the context of

wrongful death cases is mere dictum and does not support broadening the exception beyond the wrongful death context.²

Moreover, contrary to Ellis, longstanding and more recent cases from this Court demonstrate this Court's continued commitment to the general rule and reflect no intention of broadening to other kinds of tort actions the exception statutorily carved out for wrongful death cases. See, e.g., Meighan, 51 So. at 778 (holding that only compensatory damages are recoverable in a surviving tort action against the estate of a deceased tortfeasor, in a non-wrongful death case); Resolution Trust, 592 So. 2d at 191 (holding that punitive damages were not recoverable against the estate of a deceased tortfeasor in a fraud case).

The expansion of the exception statutorily created for the survival of wrongful death actions to other kinds of actions would be problematic for a number of general policy reasons as well. First, such an expansion would not be a broadening of an interpretation of this Court's making; it

² What is more, the Alabama legislature has since indicated that the public policy of this state will not tolerate the imposition of punitive damages against anyone other than the wrongdoer. Ala. Code § 6-11-21(e).

would be the judicial creation of a new exception using the wrongful death statute as a jumping off point, thus invading the role of the legislature as the public policy maker in Alabama. See Denson v. Ala. Fuel & Iron Co., 73 So. 525, 529 (Ala. 1916). Second, such a broadening would subsume the rule by allowing for the recovery of punitive damages from the estate of the wrongdoer based upon any underlying cause of action.

Thus, this Court should reaffirm its longstanding adherence to the majority rule that punitive damages are not recoverable against the estate of a wrongdoer. This rule, followed by more than 30 other jurisdictions across the United States, fairly and adequately takes into account the punitive and deterrent purposes of punitive damages without unfairly and improperly shifting the burden of such punishment onto the innocent heirs of a deceased tortfeasor. Cf. Resolution Trust, 592 So. 2d at 191 (noting that when the tortfeasor "no longer exists and thus cannot be punished . . . the deterrent value of punitive damages is likewise diminished and must be weighed against the realization that innocent parties will be required to bear the burden imposed by the damages").

II. The trial court cannot go behind a jury's improper joint and several punitive damage award and reassign the punitive damages to each individual defendant based on its own speculation as to the jury's intent.

Historically, Alabama did not allow for the individual assessment of punitive damage awards; in multi-tortfeasor cases, all damages were awarded jointly and severally against all defendants. In 1986, this Court acknowledged that most jurisdictions had, in the context of punitive damages, "departed from the compensation-based emphasis of joint and several liability and gone to the more punishment-oriented approach of apportionment." Black Belt Wood Co. v. Sessions, 514 So. 2d 1249, 1262-63 (Ala. 1986) (analyzing punitive damages within the context of a wrongful death action). This Court noted that separate apportionment, especially in the context of punitive damages, "splits up damages in proportion to the separate culpability of each defendant, and, as a result, penalties conform more closely to the culpability of the offender." Id. at 1263. However, this Court also noted that at that time, Alabama had not yet elected to follow the rule of apportionment. Such an election, this Court felt, "should be made by the legislature rather than by the court." Id. at 1263-64.

In 1996, the U.S. Supreme Court rendered its opinion in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), which listed as one of three factors to be considered when determining the validity of a punitive damages verdict the degree of reprehensibility of each individual defendant's conduct. The Supreme Court articulated these factors in an effort to help courts ensure that punitive damage awards were not so excessive as to deprive the defendant of due process under the U.S. Constitution.

In 1999, in light of the Supreme Court's decision in Gore, the Alabama legislature accepted this Court's invitation and amended the punitive damage statute to provide: "[N]o defendant shall be liable for any punitive damages unless that defendant has been expressly found by the trier of fact to have engaged in conduct . . . warranting punitive damages, and such defendant shall be liable only for punitive damages commensurate with that defendant's own conduct." Ala. Code § 6-11-21(e).

The law now requires in a multi-tortfeasor suit that the jury assess punitive damages separately against each

defendant according to each defendant's own culpability.³ See also Ala. Law of Damages § 4:3 (6th ed.). In other words, "joint tortfeasors are not jointly and severally liable for an award of punitive damages." Boles v. Parris, 952 So. 2d 364, 366 (Ala. 2006). "Thus, the trial court fact finder must apportion punitive damages among the joint tortfeasors." Ala. Law of Damages § 4:7 (6th ed.); Fuller v. Preferred Risk Life Ins., 577 So. 2d. 878, 884 (Ala. 1991) ("Once a jury is demanded by either party, the jury has the constitutional authority to determine what amount, if any, of punitive damages is necessary to punish a defendant for wrongful conduct and to deter future conduct of a like nature. The common law assigned this function to the jury.").

Where a jury does not return a proper verdict fixing an amount of punitive damages against each defendant according to each defendant's own culpability, the trial court cannot speculate as to how the jury might have apportioned the

³ Of course, wrongful death actions, which by statute allow for a single recovery of punitive damages only, are excepted from this apportionment rule. Ala. Code § 6-11-21(j); see also Black Belt, 514 So. 2d at 1261-63 (describing the longstanding rule of non-apportionment of damages in wrongful death actions).

punitive damage award. See, e.g., City Realty, Inc. v. Cont'l Cas. Co., 623 So. 2d 1039, 1044-45 (Ala. 1993) (determining that it was "pure speculation" for the trial court "to designate what portion of the verdict was compensatory and what portion was punitive" when the verdict form was defective and did not ask the jury to specifically determine each measure of damages, thereby leaving the defendant's culpability unresolved); cf. Fuller, 557 So. 2d at 884 (stating that it is solely the jury's responsibility to fix the amount of punitive damages against a defendant, though Justice Shores advocated in her special concurrence that courts be allowed to allocate portions of a jury's punitive damage award to entities other than the plaintiff); Smith v. States General Life Ins. Co., 592 So. 2d 1021, 1025 (Ala. 1992) (reversing a trial court's award of half the jury's punitive damage award to an entity other than the plaintiff).

By law, the jury must assess punitive damages individually against each of the defendants in a proportion commensurate with that defendant's culpability. Ala. Code § 6-11-21(e). The Alabama Constitution recognizes "[t]hat the right to trial by jury shall remain inviolate." Ala.

Const., art. I, § 11. Furthermore, “[a] jury determination of the amount of damages is the essence of the right to trial by jury.” Ind. Chem. & Fiberglass Corp. v. Chandler, 547 So. 2d 812, 818 n.1 (Ala. 1988). Thus, the assessment of punitive damages against each defendant according to each defendant’s own culpability is a matter solely within the province of the jury. The trial court’s entry of judgment based upon its own interpretation of what the jury might have intended violates the defendants’ constitutionally protected rights to trial by jury and due process. Ala. Const., art. I, §§ 11 & 13; see, e.g., Lloyd Noland Hosp. v. Durham, 906 So. 2d 157, 170, 173-74 (Ala. 2005) (determining that a statutory provision prohibiting the jury from and allowing a trial court to reduce future damages to present value violated the defendant’s right to trial by jury and right to due process).

Moreover, it is black letter law that the court cannot go behind the jury’s verdict and speculate as to what damages the jury intended to award—especially where the damages involved are punitive and, therefore, “not susceptible of precise measurement.” Moore v. Mobile Infirmary Ass’n, 592 So. 2d 156, 160 (Ala. 1991); Ala.

Power Co. v. Mosley, 318 So. 2d 260, 266 (Ala. 1975) (noting that the jury's role in fixing the amount of damages has been regarded as particularly sacrosanct in cases involving damages not susceptible of precise measurement); Thompson v. S. Ry., 85 So. 591, 592-93 (Ala. 1920) ("To permit a trial judge to substitute his judgment on the facts for that of the jury, or to give undue presumption to the action of the trial judge in dealing with verdicts, would minimize the jury system, render juries advisers of the trial judge rather than a positive force in the administration of justice, and would be an entering wedge to a destruction of jury trials."). Thus, "a court's right to amend a jury verdict after discharge of the jury is limited to matters of form or clerical errors that are apparent from the record." Ala. Farm Bureau Mut. Cas. Ins. Co. v. Williams, 530 So. 2d 1371, 1377 (Ala. 1988). A court's authority to amend a verdict after the jury has been discharged certainly cannot extend to matters of substance that a jury must determine, such as the amount of punitive damages to be assessed against each defendant based on each defendant's own culpability. Accord Alexiou v. Christu, 232 So. 2d 595 (Ala. 1970); Barry v. Edmunds,

116 U.S. 550, 565 (1886) (“[N]othing is better settled than that, in such cases as the present [trespass], and other actions for torts where no precise rule of law fixes the recoverable damages, it is the peculiar function of the jury to determine the amount by their verdict.”); see also Bozeman v. Busby, 639 So. 2d 501 (Ala. 1994) (declaring unconstitutional the portion of Ala. Code § 6-11-23(b) that purported to allow trial courts to order an additur to punitive damages awarded by a jury).

A trial court exceeds its authority when it redistributes a jury’s punitive damage verdicts awarded jointly and severally in a proportion figured by the trial court based upon the court’s own judgment or speculation as to the jury’s intent. Such conduct usurps the role of the jury and impinges upon the parties’ constitutional rights to trial by jury and due process.

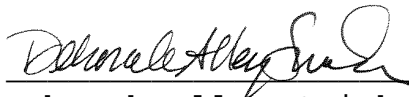
CONCLUSION

For the reasons stated above, ADLA urges the Court to vacate the judgment of the trial court and remand the case for a new trial. To do otherwise would render a century's worth of this Court's precedent meaningless and rewrite the general rule regarding the survival of punitive damage claims in this state. The Court has an opportunity here to reaffirm its longstanding rule prohibiting the recovery of punitive damages against a deceased tortfeasor's estate (except in the unique case of wrongful death) because the purpose for such damages is virtually eliminated when the wrongdoer dies. Shifting the responsibility for punitive damages to the innocent heirs or successors of the wrongdoer would be inequitable and inconsistent with this Court's precedent and the precedent of the overwhelming majority of jurisdictions in the United States. Public policy does not and cannot support imposing a punishment upon the innocent heirs.

Moreover, it is the province of the jury, and the jury alone, to fix the amount of punitive damages to be assessed against a particular defendant commensurate with that

defendant's culpability. Trial courts cannot be allowed to reallocate a jury's punitive damage verdict based upon the court's own judgment as to each defendant's culpability or based on speculation as to the jury's intent; such conduct not only usurps the role of the jury but also violates a defendant's constitutional right to trial by jury.

Respectfully submitted,



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TO: The Clerk of the Supreme Court of Alabama

Case No. 1110353

MARY LEILA SCHAEFFER and
the ESTATE OF EMMA GLASS
BEASLEY,

Appellants,

v.

WILLIAM POELLNITZ, as
ADMINISTRATOR OF THE ESTATE
OF EDWIN G. YOUNG, ET AL.,

Appellees.

On Appeal from the Circuit
Court of Perry County,
Case No. CV-2005-040

I certify that I have this date served a copy of the foregoing brief and argument on counsel of record for all parties to this appeal by sending an electronic copy of same via email to the following:

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