

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1154

(Senator Ready)

Judicial Proceedings

Courts - Limitation on Damages Arising Out of Bedbug Extermination

This bill limits the damages that may be awarded in a civil action brought against a pesticide business licensed in the State arising out of the business's treatment of a bedbug infestation to actual damages sustained by the plaintiff unless the act or omission giving rise to the claim is one of gross negligence.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Actual damages, also known as compensatory damages, are damages designed to make a plaintiff whole by returning the plaintiff to the position he/she was in prior to the alleged harm caused by the defendant. Lost wages, medical expenses, and costs to repair or replace property are examples of actual damages. In a personal injury action, "noneconomic damages" are damages for pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury. Noneconomic damages do not include punitive damages. Punitive damages are damages in addition to actual damages that are awarded in situations when a defendant has been found to have acted with recklessness, malice, or deceit. Punitive damages are designed to punish and deter blameworthy behavior.

In Maryland, punitive damages may only be awarded if a plaintiff can show that the defendant acted with actual malice, “in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud.” *Scott v. Jenkins*, 345 Md. 21, 34 (1997) quoting *Montgomery Ward v. Wilson*, 339 Md. 701, 733 (1995). A plaintiff must establish his/her claim to punitive damages by clear and convincing evidence. *Owens-Illinois v. Zenobia*, 325 Md. 420, 469 (1992). However, punitive damages are not a right, and it is in the discretion of the trier of fact whether or not to award punitive damages. *Philip Morris, Inc. v. Angeletti*, 358 Md. 689, 773-774 (2000). A plaintiff may not be awarded punitive damages if the plaintiff was not awarded compensatory damages for each count which forms the foundation for the plaintiff’s claim for punitive damages. *Caldor v. Bowden*, 330 Md. 632, 662 (1993).

Maryland courts have addressed what constitutes gross negligence on several occasions with respect to various circumstances. In *McCoy v. Hatmaker*, 135 Md. App. 693 (2000), a case involving services provided by emergency medical technicians in the course of their assigned duties, the Maryland Court of Special Appeals noted that “[g]ross negligence has been equated with ‘willful and wanton misconduct,’ a ‘wanton or reckless disregard for human life or for the rights of others.’” *McCoy* at 706 quoting *Tatum v. Gigliotti*, 80 Md. App. 559, 568 (1989). The court went on to explain that a person is grossly negligent or acts wantonly and willfully “only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.” *McCoy* at 706 quoting *Tatum*, 80 Md. App. 569, 568.

Small Business Effect: Given that the standard to establish “gross negligence” is significantly more difficult to meet than the threshold of fault necessary for a court to award compensatory damages, small businesses that are required to pay damages for inadequate bedbug eradication benefit significantly from the likely avoidance of punitive damages under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Agriculture, Department of Health and Mental Hygiene, *Black’s Law Dictionary*, Department of Legislative Services

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min/kdm

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