

Punitive Damages under the Connecticut Unfair Trade Practices Act

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With regular frequency, cases of all types include a count alleging violation of Connecticut's Unfair Trade Practice Act ("CUTPA"). Although the Connecticut courts have done a good job in framing the standards by which a CUTPA violation is determined, the standards for measuring punitive damages is less certain. In this article, we will explore briefly the circumstances under which punitive damages can be awarded and then discuss the various ways the courts have measured those damages.

CUTPA provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."¹ A cause of action for a violation of CUTPA accrues where one suffers "an ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice" as described above.²

CUTPA provides for punitive damage awards.³ Indeed, the General Statutes provide that "[t]he court may, in its discretion, award punitive damages ... as it deems necessary or proper."⁴ Punitive damage awards are made by the court, rather than the jury.⁵ By way of broad statutory language, the legislature bestowed upon the courts great flexibility in calculating and awarding punitive damages for violations of CUTPA. As such, punitive damage awards for CUTPA violations do not follow a consistent pattern of application or calculation.

In order to properly support an award of punitive damages, the "evidence must reveal a reckless indifference to the rights of others or intentional and wanton violation of those rights."⁶ Indeed, the Connecticut Supreme Court has explained that "the

flavor of the basic requirement to justify an award of punitive damage is described in terms of wanton and malicious injury, evil motive and violence."⁷ Without such evidence, an award of punitive damages is inappropriate.

There exists no precise formula to calculate punitive damage awards in CUTPA cases. Rather, courts look to several guiding principles in crafting their awards. First, courts recognize the deterrent purpose behind the imposition of punitive damages and seek to further this goal when awarding punitive damages.⁸ Second, courts look to the financial standing of the particular defendant in order to ensure that the punitive damage award has the desired deterrent effect.⁹ Third, in calculating the punitive damages award, courts will look to all factual circumstances of the CUTPA claim and damages, including mitigating evidence.¹⁰

Although, as explained above, the "CUTPA statutes do not provide a method for determining punitive damages, courts generally award punitive in the amounts equal to actual damages or multiples of actual damages."¹¹ Punitive damages, however, may also be awarded where the plaintiff does not show the existence of actual damages flowing from the CUTPA violation¹² or

1 Connecticut General Statutes § 42-110b.

2 Connecticut General Statutes § 42-110g. "The 'ascertainable loss' standard requires no more than the '... production of evidence fairly suggestive that, as a result of an unfair or deceptive trade practice, [the plaintiff] received something different from that for which [he] had bargained ...'" *Zelencich v. American Yacht Services*, No. CV-201871455, 2006 Conn. Super. LEXIS 2296, at *19 (Conn. Super. Ct. July 31, 2006) (quoting *Hinchliffe v. American Motors Corp.*, 184 Conn. 607, 619 (1981)).

3 Connecticut General Statutes § 42-110g(a).

4 *Id.*

5 Connecticut General Statutes § 42-110g(a) (stating that the "court may, in its discretion, award punitive damages").

6 *Advanced Financial Services, Inc. v. Associated Appraisal Services, Inc.*, 79 Conn. App. 22, 34 (Conn. App. Ct. 2003).

7 *Gargano v. Heyman*, 203 Conn. 616, 622 (1987) (quoting *Venturi v. Savitt, Inc.*, 1991 Conn. 588, 592 (1983)).

8 See *Bristol Technology, Inc. v. Microsoft Corp.*, 114 F. Supp. 2d 59, 80 (D. Conn. 2000) (holding that "[a] punitive damages award under CUTPA should ... take account of the financial status and size of the defendant to ensure that the damage award will have the deterrent effect on the defendant and others that it is designed to achieve").

9 See *Id.*

10 See *Carmel Homes, Inc. v. Bednar*, No. CV9900793935, 2001 Conn. Super. LEXIS 2865, at *33-34 (Oct. 1, 2001). In *Carmel Homes*, the defendant alleged a CUTPA violation in a counterclaim against the plaintiff builder for failing to install fire stopping material in its structures. *Id.* at *34. The court addressed the mitigating circumstances and recognized that, almost immediately, all parties were aware of the dangerous condition. See *Id.* Furthermore, the plaintiff was not able to monitor the repairs by the manufacturer because the defendant had ordered the plaintiff off of the property. *Id.* The court therefore concluded that both the high measure of damages proposed by the defendant and the low measure of damages set forth by the plaintiff were inappropriate given the circumstances. See *id.* at *35. The court awarded punitive damages in the amount of \$15,000. *Id.*

11 *Advanced Financial Services, Inc. v. Associated Appraisal Services, Inc.*, 79 Conn. App. 22, 34 (Conn. App. Ct. 2003).

12 *Zelencich*, 2006 Conn. Super. LEXIS at *21 (citing *Larobina v. Home Depot, Inc.*, 76 Conn. App. 586, 598 (Conn. App. Ct. 2003); *Tillquist v. Ford Motor Credit Co.*, 714 F. Supp. 607, 617 (D. Conn. 1989)).

when the court awards only nominal damages.¹³ Additionally, a plaintiff need not plead or prove compensatory damages in order to recover punitive damages under CUTPA.¹⁴ Because the application of punitive damages under CUTPA is so broad and undefined, the Connecticut Supreme Court has noted that “CUTPA creates an essentially equitable cause of action.”¹⁵

Lastly, despite the deterrent purpose of punitive damages under CUTPA, the court must ensure that a punitive damage award adhere to the notions of fairness.¹⁶ In determining whether an award adheres to that standard, courts generally look to the three factors listed in *BMW of North America, Inc. v. Gore*.¹⁷ The factors are as follows: “[1] the degree of reprehensibility of the [relevant conduct]; [2] the disparity between the harm or the potential harm suffered by [the plaintiff] and his punitive damages award; and [3] the difference between this remedy and the civil penalties authorized or imposed in comparable cases.”¹⁸

The following are a selection of recent cases chosen to demonstrate how punitive damage awards for CUTPA violations are awarded and calculated.

In *Emerald Investments*, the District Court for the District of Connecticut awarded \$1.1 million in punitive damages under CUTPA because this amount “reflects damage to the plaintiffs due to [defendant’s] fraud and for which the plaintiffs received no benefit” and because the amount was sufficient to achieve CUTPA’s deterrent purpose.¹⁹ First, the court recognized that, in order to properly measure punitive damages, the court must determine the financial status of the defendant so that the court can be assured that the punitive damage award will accomplish its deterrent effect.²⁰ The court then concluded that the puni-

tive damages would be calculated by adding the compensatory damage award and “that portion of the rescissionary amount that was lost in the failed ... development and monies paid to the defendants.”²¹ The court reasoned that, if the punitive damages were limited to the amount of the jury award, the award would not fully reflect the extent of the plaintiff’s damages.²² If, however, the court awarded punitive damages in the full restitutionary amount, the damages would be inappropriate because the award would include “money that benefitted the plaintiff.”²³

Furthermore, in *Field v. CYR Concrete Contractors*, the court, using the typical calculation of punitive damages, awarded \$12,400 in punitive damages, which was equal to the amount of actual damages.²⁴ The plaintiffs in *Field* claimed that the defendant violated CUTPA as a result of its per se violation of the Home Improvement Act.²⁵ The defendant defaulted and, as such, the court determined that “the defendant ... admitted that its actions were willful, deliberate, and caused the plaintiff substantial injury ...,” and, therefore, determined that an award of punitive damages was appropriate.²⁶

The court awarded only \$25,000 for punitive damages in *Rossman v. Morasco*, a minimal amount in that it equaled only one-third of the actual damages awarded.²⁷ The case involved a dispute arising out of a business and family relationship where neither party had unclean hands.²⁸ Thus, the court awarded minimal punitive damages “for the purpose, not of rewarding the defendants, but to vindicate the purpose of the unfair trade practices statute which is to dissuade business activities which are unfair or deceptive.”²⁹

Conversely, in *Clark v. Hunt*, the court determined that the plaintiff was not entitled to any award of punitive damages because the defendant did not exhibit a reckless indifference to the rights of the plaintiff, “nor an intentional and wanton

13 See *Emerald Investments, LLC v. Porter Bridge and Loan Co.*, No. 3:05-cv-1598, 2007 U.S. Dist. LEXIS 45621, *26 (D. Conn. June 25, 2007). (stating that “a court may also award punitive damages and attorney’s fees to a plaintiff who has been awarded only nominal damages resulting from an unfair or deceptive practice under CUTPA.”) When no compensatory damages are awarded, or when only nominal damages are awarded, courts will disregard the typical standard of applying multipliers to the compensatory damages award and instead look to the deterrent effect when determining the punitive damages under CUTPA for nominal compensatory amounts. See *Bristol Technology*, 114 F. Supp. 2d 59, 85 (D. Conn. 2000).

14 *Emerald Investments*, 2007 U.S. Dist. LEXIS 45621, at *26.

15 See *id.* (quoting *Associated Inv. Co. Ltd. P’ship v. Williams Assocs.*, 230 Conn. 148, 155 (1994)).

16 See *Fabri v. United Tech. Int’l, Inc.*, 387 F.3d 109, 125 (2d Cir. 2004).

17 See *id.* (citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)).

18 *Fabri*, 387 F.3d at 125 (quoting *BMW of North America*, 517 U.S. at 575).

19 See 2007 U.S. Dist. LEXIS 45621, at *32.

20 See *id.* at *29-30.

21 *Id.* at *31.

22 *Id.*

23 *Id.*

24 No. HHBCV064010141S, 2007 Conn. Super. LEXIS 2600, at *3 (Conn. Supp. Ct. Sept. 27, 2007).

25 *Id.* at *2.

26 *Id.* at *3.

27 No. X08CV010183603S, 2006 Conn. Super. LEXIS 2297, at *8 (Conn. Supp. Ct. July 31, 2006).

28 See *id.*

29 *Id.*

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violation of those rights.”³⁰ The basis of the CUTPA violation in *Clark* was a per se violation arising from a breach of the Home Improvement Act.³¹ The court reasoned that “[t]he defendant’s failure to perform his services in a manner satisfactory to the plaintiffs and his failure to correct his work do not rise to the level of a reckless indifference to the plaintiffs’ rights and certainly do not constitute wanton and malicious injury.”³²

30 No. CV0287877, 2003 Conn. Super. LEXIS 209, at *5 (Conn. Super. Ct. Jan. 16, 2003).

31 *See id.* at *4.

32 *Id.* at *5.

The application and calculation of punitive damages, while subject to much court discretion, is a critical area of law for the defense bar to understand to the greatest extent possible. Indeed, punitive damage awards can vary considerably and, as seen above, can involve extremely large figures. As such, it is important to understand the relevant inquiries pertaining to awarding and calculating punitive damages for CUTPA violations so as to better counsel clients and defend against demands for punitive damages.

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