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Indiana Court Examines State's Ability to Intervene to Protect Interest in Punitive Damages

Today we begin with a case from last week out of the Indiana Court of Appeals: *Weinberger v. Estate of Barnes*. I had planned to write a post dedicated to this case last week, but the week got away from me. This case is part of a line of cases best known as **the Weinberger cases**. The Weinberger cases are a dark chapter in Indiana history. They stem from unnecessary surgeries, false billing, and malpractice by a disgraced ear, nose, and throat doctor from northwest Indiana. The doctor absconded in 2004 after malpractice cases started rolling in. He was discovered in the Italian Alps in 2009. He has since been brought back to the U.S. and sentenced to seven years for 22 counts of health care benefit fraud. Many of the cases have already been resolved as part of a \$55 million settlement. Some, such as today's case, went to trial.

The facts behind the *Barnes* case are particularly alarming. As the court summarized:

In September 2001, Phyllis Barnes was seen by Mark S. Weinberger, M.D., an ear, nose, and throat specialist (ENT). Barnes was seeking

treatment for symptoms including coughing, hoarseness, and difficulty swallowing and breathing. Weinberger ordered a CT scan of Barnes's sinuses, which were shown to be clear and normal. Despite the absence of sinus disease, on October 11, 20[0]1, Weinberger performed extensive and risky surgery on Barnes, removing all of her sinus cavities. Barnes continued to have difficulty breathing following the surgery and, after seeking further treatment from Weinberger to no avail, saw Dr. Dennis Han, another ENT. At Barnes's first appointment, Dr. Han diagnosed her with Stage IV laryngeal cancer. Based on Barnes's history and condition, Dr. Han believed that Barnes had had cancer for at least six to nine months and that there were clear indications of cancer at the time she saw Weinberger. Barnes underwent extensive treatment for her cancer, including chemotherapy, radiation, and numerous surgeries. Barnes was cured of laryngeal cancer, but suffered a recurrence in her lungs, leading to her death at the age of fifty.

The case proceeded to trial and the jury returned a verdict in favor of Barnes's estate in the amount of \$3 million compensatory damages and \$10 million in punitive damages.

In order for everything that happened thereafter to make sense, we need to take a quick look at how caps work in Indiana' for medical malpractice and for punitive damages. In Indiana, the amount a person can recover for injuries from medical malpractice is controlled by Ind. Code § 34-18-14-3. That code section caps "[t]he total amount recoverable for an injury or death of a patient" at \$1.25M. The first \$250,000 is paid by the doctor/his insurance. The next \$1M is to be paid by the state's Patient Compensation Fund (PCF).

Indiana's punitive damages limits are a bit more complicated. The limits are set out in Ind. Code § 34-51-3-4. Punitive damages cannot exceed three times the compensatory damages awarded, unless that multiplier would reduce the award to under \$50,000. A punitive damages award that initially exceeds \$50,000 cannot be reduced below that baseline.

So we are clear on terminology, compensatory damages are the damages awarded for the actual injury suffered. This includes things such as pain and suffering along with medical bills. Punitive damages, as we've discussed before, are awarded as punishment for the actions of a defendant. The purpose is not to compensate the plaintiff as much as to provide a deterrent for the bad behavior. Because of this purpose, Indiana law, unlike many other states, does not allow the plaintiff to retain the majority of the punitive damages award. Code section 34-51-3-

6 reduces the plaintiff's share of the award to 25% with the other 75% paid to the state and directed to the violent crime victims compensation fund. As a result, the state derives a very strong interest in cases once a punitive damages award has been ordered.

Returning to the *Barnes* case: Weinberger moved for entry of judgment to reduce the amount of the compensatory damages award to the Indiana medical malpractice cap (\$1.25M) and to triple the amount of compensatory damages award for punitive damages (\$3M x 3 = \$9M). The trial court agreed. Both Weinberger and the Estate of Barnes filed notices of appeal to preserve the right to appeal. However, Weinberger, the PCF, and the Estate settled for an undisclosed amount. That left the state, with regards to the punitive damages award, as the only entity with any interest that had not settled. Thus, the question on appeal was whether the state could intervene either on appeal or in the trial court to protect its interest in the punitive damages award.

The court first noted that the only right that the state has toward a case in which it does not itself have standing (i.e. injury, causation, and redressability) is by function of legislation. Thus, the court looked to the specific code section and concluded that the legislature had not empowered the state, through the attorney general, to intervene in a private case at any stage of the proceedings to protect its interest in a punitive damages award. As result, because the other parties had settled the case, the appeal was dismissed.

Join us again next time for further discussion of developments in the law.

Sources

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- Ind. Code § 34-18-14-3.
- Ind. Code § 34-51-3-4.
- Ind. Code § 34-51-3-6.
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