

0/a 6-3-86

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,761

CHRYSLER CORPORATION, etc.,)

Petitioner,)

vs.)

JACK E. WOLMER, etc.,)

Respondent.)

BRIEF OF AMICUS CURIAE,
FLORIDA DEFENSE LAWYERS ASSOCIATION,
IN SUPPORT OF PETITIONER

JOSEPH S. KASHI, ESQUIRE
CONRAD, SCHERER & JAMES
Post Office Box 14723
Fort Lauderdale, Florida 33302
(305) 462-5500

TABLE OF CONTENTS

	<u>Page</u>
CITATIONS OF AUTHORITY	ii
ISSUES	
Should Punitive Damages be Permitted in Design Defect Cases. Alternatively, Should Safeguards be Adopted to Prevent the Abuse of Punitive Damages in Product Liability Cases?	1
ARGUMENT	
Punitive Damages Should Not be Permitted in Design Defect Cases. Alternatively, Safeguards Should be Adopted to Prevent the Abuse of Punitive Damages in Product Liability Cases.	2
CONCLUSION	5
CERTIFICATE OF SERVICE	6
APPENDIX	

CITATIONS OF AUTHORITY

Page

Cases

American Cyanamid Company v. Roy
Supreme Court of Florida, Case No. 67,124 2

Voynar v. Butler Manufacturing Company
463 So.2d 409 (Fla. 1985) 3

White Construction Company v. Dupont
455 So.2d 1026 (Fla. 1984) 4

Como Oil Company, Inc. v. O'Loughlin
466 So.2d 1061 (Fla. 1985) 4

Other Authorities

Wheeler, The Constitutional Case for Reforming
Punitive Damage Procedures
69 Va. L. Rev. 269 (1983) 3

ISSUES

SHOULD PUNITIVE DAMAGES BE PERMITTED IN DESIGN DEFECT CASES.
ALTERNATIVELY, SHOULD SAFEGUARDS BE ADOPTED TO PREVENT THE ABUSE
OF PUNITIVE DAMAGES IN PRODUCT LIABILITY CASES?

ARGUMENT

PUNITIVE DAMAGES SHOULD NOT BE PERMITTED IN DESIGN DEFECT CASES. ALTERNATIVELY, SAFEGUARDS SHOULD BE ADOPTED TO PREVENT THE ABUSE OF PUNITIVE DAMAGES IN PRODUCT LIABILITY CASES.

Punitive damages is a wart on the nose of product liability law that mars an otherwise attractive face. The evil it wreaks is far more than cosmetic and strikes at the heart of the system.

The Florida Defense Lawyers Association's views towards punitive damages in product liability cases was expressed recently in its amicus brief in this court in American Cyanamid Company v. Roy, Case No. 67,124, which is reproduced in the Appendix. We will only briefly add to those comments here.

Punitive damages should not be permitted in product liability cases predicated upon design defect. The avowed purpose of punitive damages is to serve as a deterrent to the tortfeasor and to others that might seek to emulate its conduct. In design defect cases, however, the prospect of paying compensatory damages caused by a defective product is in itself a sufficient deterrent. In the design case, it is not alleged that a particular product or even a particular lot of a product is defective; rather, it is alleged that the entire product line is unreasonably dangerous by reason of its fundamental concept. In such a case, the potential liability for compensatory damage claims alone is so staggering that no further deterrent is necessary. Any would be malefactor prompted solely by selfish motives would be cowed by the fear of such far reaching liability.

Even those who would not outlaw punitive damages in product liability cases recognize its pernicious effect and the need for

safeguards. For instance, the report of the Senate Committee on Commerce, Science and Transportation, May 23, 1984, Product Liability Act, S.44, Section 12, reproduced in CCH Products Liability Reports, Extra Edition, No. 546 (June 8, 1984), recognizes that inasmuch as punitive damages are a quasi-criminal sanction, clear and convincing evidence should be required before they may be assessed and that "[o]nly one punitive damage award may be made for the same allegation of reckless disregard for the safety of others."

One of the problems associated with punitive damages is that the mere presence of a claim greatly expands the scope of admissible evidence. For instance, evidence of subsequent remedial measures is inadmissible in a product liability case. Voynar v. Butler Manufacturing Company, 463 So.2d 409 (Fla. 4th DCA 1985). When punitive damages are sought, however, evidence of subsequent conduct is admissible to establish malice. Thus, evidence which it is recognized will prejudice a fair appraisal of the issue of underlying liability is permitted for the sake of punitive damages. This is an example of the tail being permitted to wag the dog. For this reason, it has been suggested that trials in which punitive damages are sought should be bifurcated, with the first phase of the trial determining liability and compensatory damages, and the second determining only punitive damages. Wheeler, The Constitutional Case for Reforming Punitive Damage Procedures, 69 Va. L. Rev. 269 (1983). This procedure is particularly appropriate since evidence of a defendant's wealth is permitted when punitive damages are sought. This is another

example of evidence that ordinarily would not be countenanced but that is allowed to contaminate the results in every case in which punitive damages are requested.

In theory, punitive damages are supposed to be an extraordinary form of relief. In practice, however, they have become commonplace. Today, it is the exception rather than the rule not to request punitive damages in product liability cases, and the courts have been increasingly liberal in allowing punitive damage claims to go to the jury. The present case is an example of this liberal trend. Although the product exceeded federal safety standards, the jury was permitted to conclude that the manufacturer had engaged in willful misconduct. This is an anomaly. Surely, adherence to federal safety standards, although as a matter of law insufficient to negate liability for compensatory damages, is evidence of sufficient care to absolve the manufacturer of liability for punitive damages.

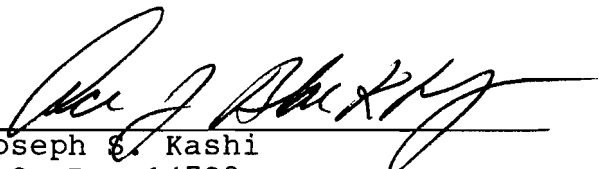
In White Construction Company v. Dupont, 455 So.2d 1026 (Fla. 1984), this court attempted to confine punitive damages to cases of criminal misconduct. The court's adherence to this philosophy was restated in Como Oil Company, Inc. v. O'Loughlin, 466 So.2d 1061 (Fla. 1985). Notwithstanding this clear enunciation of principle, this court's declarations have gone unheeded in the District Courts of Appeal. For instance, the District Court in the present case, although citing White Construction, disregarded its teachings. It is incomprehensible that White Construction and the decision of the District Court in the instant case may stand side by side.

CONCLUSION

Punitive damages should not be allowed in design defect cases because the rationale for punitive damages is nonexistent in this class of litigation. If punitive damages are to be permitted, safeguards should be adopted to prevent their abuse. Clear and convincing evidence of wanton misconduct should be required before punitive damages may be assessed. Multiple awards of punitive damages for the same misconduct should not be allowed. Trial should be bifurcated, with the issues of liability for compensatory damages and their amount being decided before liability for punitive damages and their amount. Finally, criminal standards of misconduct should be rigorously enforced, and the privilege against self-incrimination and other safeguards available to criminal defendants should be afforded to the defendant in punitive damage cases.

Respectfully submitted,

Conrad, Scherer & James



Joseph E. Kashi
P.O. Box 14723
Fort Lauderdale, Florida 33302
(305) 462-5500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Amicus Curiae, Florida Defense Lawyers Association, in Support of Petitioner was mailed this 31st day of March, 1986 to:

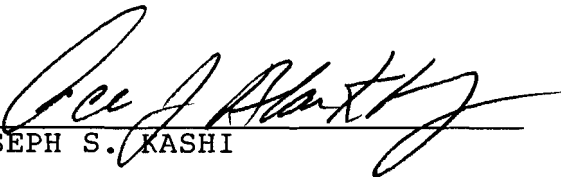
GILBERT A. HADDAD, ESQ.
Post Office Box 345118
Coral Gables, Florida 33114

JOEL S. PERWIN, ESQ.
25 West Flagler Street, Suite 1201
Miami, Florida 33130

MICHAEL B. DAVIS, ESQ.
Post Office Box 3797
West Palm Beach, Florida 33402

SHEILA L. BIRNBAUM, ESQ.
919 Third Avenue
New York, New York 10022-9931

EDWARD T. O'DONNELL, ESQ.
Suite 4500
200 South Biscayne Boulevard
Miami, Florida 33131-2378



JOSEPH S. KASHI