IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
22ND JUDICIAL CIRCUIT
STATE OF MISSOURI

L.P., A MINOR, et al.	)	
	)	
	)	
v.	)	Case No. 2022-CC00495
	)	
WABASH NATIONAL CORPORATION, et al.	)	
	)	

Suggestions in Opposition to the Entry of Judgment on the Verdict

The verdict of $450 million in damages for aggravating circumstances is excessive in violation of the Due Process Clause in the Fourteenth Amendment of the United States Constitution and Article I, section 10 of the Missouri Constitution. The Court should not enter a judgment for excessive aggravating circumstances damages.

"[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Kelly v. Bass Pro Outdoor World*, 245 S.W.3d 841, 850–851 (Mo. App. 2007) (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 424 (2003)). "An award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." *Id.* at 851 (quoting *State Farm*, 538 U.S. at 424).

As it stands, the $450 million damages verdict for aggravating circumstances is 37.5 times the $12 million compensatory damages award. If the Court enters judgment, it should reduce the excessive award to a single-digit ratio of aggravating circumstances damages to compensatory damages.

The aggravating circumstances damages are excessive and violate due process

"Aggravating circumstance damages in wrongful death cases are the equivalent of punitive damages and due process safeguards are required." *Smith v. Brown & Williamson Tobacco Corp.*, 275 S.W.3d 748, 810 (Mo. App. 2008) (quoting *Call v. Heard*, 925 S.W.2d 840, 849 (Mo. banc 1996)). In assessing an award of damages for aggravating circumstances, the Court "must ensure the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Kelly*, 245 S.W.3d at 851.

Missouri courts review the constitutionality of the award by examining three factors: (1) the reprehensibility of the defendant's conduct; (2) the disparity between the harm and punitive damages award; and (3) the difference between the punitive award and penalties authorized or imposed in comparable cases. *Id.* at 850.

All three factors support reducing the jury's $450 million damages award to an amount based on a single-digit multiplier.[1]

A. The disparity between the harm and aggravating circumstances damages (the ratio factor)

"Few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Kelly*, 245 S.W.3d at 850–851 (quoting *State Farm*, 538 U.S. at 424). Even "an award of more than four times the amount of compensatory damages might be close to the line of

[1] In filing this motion, Wabash does not concede that the plaintiffs presented a submissible case for aggravating circumstances damages (they did not), nor does it waive its right to file a JNOV or other appropriate post-judgment motion.

constitutional impropriety." *Id.* at 851. Single-digit multipliers are more likely to comport with due process while still achieving the State's goal of deterrence and retribution. *Id.*

In this case, during the first phase of the trial, the plaintiffs asked for the jury to award $150 million in compensatory damages. The jury rejected this request, awarding $12 million in compensatory damages. Thus, after reviewing the evidence, the jury assessed the harm to the plaintiffs at $12 million. Despite awarding 8% of the requested compensatory damages, however, the jury imposed aggravating circumstances damages 37.5 times higher than its compensatory award: $450 million.

Though there is no "mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case," the Court "should be guided by a general concern of reasonableness." *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 721 (Mo. App. 2020) (upholding a 1.8:1 and 5.72:1 ratio involving hundreds of millions in compensatory damages).

The disparity between the compensatory and aggravating circumstances damages renders the aggravating circumstances damages excessive and unreasonable. This factor weighs heavily in favor of reducing the aggravating circumstances damages awarded.

B. Wabash's conduct

In evaluating the reprehensibility favor, the Court considers whether "the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of

the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident." *Diaz v. Autozoners, LLC*, 484 S.W.3d 64, 90 (Mo. App. 2015).

Applying these factors to this case, $450 million in aggravating circumstances damages is unsupported.

The evidence of Wabash's conduct at trial fails to support the damages awarded by the jury. Wabash manufactured the subject trailer in 2004, and the plaintiffs' expert conceded that the trailer complied with the applicable government regulations, 49 CFR §§ 571.223 and 224 (Federal Motor Vehicle Safety Standard ("FMVSS") 223 and 224).

Additionally, the plaintiffs failed to identify any way Wabash allegedly departed from the standard of care in the industry that existed when the subject trailer was manufactured, claiming instead that the entire industry should be considered negligent. The plaintiffs did not identify an alternative design used in commercial transportation in 2004, when the trailer was made, that would have prevented underride in the accident. *See Lane v. Amsted Indus., Inc.*, 779 S.W.2d 754, 759 (Mo. App. 1989) ("Compliance with industry standard and custom serves to negate conscious disregard and to show that the defendant acted with a nonculpable state of mind with no knowledge of a dangerous design defect."). The evidence was undisputed that Wabash manufactured the trailer under the state of the art at the time. Additionally, the plaintiffs could not identify a RIG in existence today–20

years after the trailer was built–that would prevent underride at the speed Tailor's car was traveling.

Instead, the plaintiffs argued that Wabash is liable because its RIGs were designed under allegedly weak regulations. That the plaintiffs have an expert willing to opine–two decades after the RIG was built–that the regulations should have been stronger does nothing to prove actual knowledge at the time of manufacture to support a $450 million aggravating circumstances damages award. Even if the plaintiffs were correct, Wabash's knowledge regarding the requirements for RIGs came from regulations issued by the government agency tasked with addressing highway safety. Each criticism the plaintiffs have leveled at the regulations was specifically considered and rejected by NHTSA through its final rule setting the standards, with NHTSA expressing the concern that "[r]igid guards may stop the passenger vehicle too quickly, causing occupant deaths and injuries from sudden deceleration."[2]

While the plaintiffs' expert was critical of Wabash for not having engaged in crash testing concerning the design in issue, it is undisputed that no manufacturer, including the company that employed the plaintiffs' expert, engaged in crash testing at that time. The plaintiffs presented no evidence at trial that Wabash's testing was deficient compared with the rest of the industry. The plaintiffs' expert agreed that

[2] Exhibit A, 1996 Final Rule.

no other trailer manufacturer was engaging in testing other than that required by FMVSS 224 when the subject trailer was manufactured.[3]

Wabash has led RIG development to improve safety. The plaintiffs' expert acknowledged that, in 2007, Wabash voluntarily began manufacturing its trailers to meet the more stringent Canadian RIG standards. Wabash did so not only for trailers it sold in Canada, but also for those sold in the United States. Wabash was the first trailer manufacturer to move to this standard. The Insurance Institute for Highway Safety ("IIHS") determined that Wabash's RIGs designed to meet the Canadian standard were the strongest in North America, surpassing the strength requirements imposed by the applicable American regulations by 187% and even exceeding the more stringent Canadian requirement by 70%.[4] When NHTSA's new RIG regulations went into effect in July 2024, Wabash had been surpassing them for 17 years.[5] These are the actions of a company attempting to advance safety rather than one that has engaged in intentional, unsafe conduct.

As Wabash manufactured the trailer in compliance with federal regulations and industry standards, there is no basis for imposing aggravating circumstances damages under the theory that Wabash engaged in an intentional act that caused the deaths of Tailor and Perkins. The plaintiffs instead convinced the jury to punish Wabash for its "current conduct"—and conduct of the entire industry—from many years after making the trailer, as their theory for aggravating circumstances hinges

[3] Exhibit B (Ponder dep.), 42:21-43:8.
[4] *See* IIHS Petition for Rulemaking attached as Exhibit C.
[5] *Id.*

on Wabash's later-designed RIG-16. As the Missouri Supreme Court has explained, however, "[f]or punitive damages, evidence of current conduct is admissible only if its connection to the liability-creating acts shows 'defendant's disposition, intention, or motive in the commission of the particular acts for which damages are claimed.'" *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602, 608 (Mo. banc 2002) (citation omitted). Whether Wabash made a much later RIG design standard or optional has no bearing on its "acts for which damages are claimed."

Wabash adhered to all relevant regulations and industry standards. Imposing a substantial aggravating circumstances award in these circumstances would violate due process.

C. Difference between aggravating circumstances award and penalties authorized or imposed in comparable cases

Few Missouri cases have addressed punitive or aggravating circumstances damages awards of this size or with such a disproportionate ratio between punitive and compensatory damages. The plaintiffs argued as much during the trial, urging the jury to hold Wabash accountable for the entire industry's and the federal government's failure to raise standards for RIGs. There is no similar case like this one where $450 million in aggravating damages was imposed on a single trailer manufacturer that designed its trailers in compliance with the federal standards that existed at the time of sale.

This factor favors reducing the $450 million award.

Conclusion

In entering its judgment after the verdict and allocating damages, the Court should first reduce the punitive damages awarded to at least a single-digit ratio of aggravating circumstances damages to compensatory damages.

ARMSTRONG TEASDALE LLC

s/ Christopher D. Baucom
Christopher D. Baucom, #56465
7700 Forsyth Boulevard, Suite 1800
St. Louis, MO 63105
Telephone: 314.621.5070
Facsimile: 314.613.8550
E-mail: cbaucom@atllp.com

Brian M. Johnson *(pro hac vice)*
DICKINSON WRIGHT PLLC
300 W. Vine Street, Suite 1700
Lexington, KY 40507
Telephone: 859.899.8700
Facsimile: 844.670.6009
E-mail: bjohnson@dickinsonwright.com
COUNSEL FOR DEFENDANT
WABASH NATIONAL CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send notification of such filing to all counsel of record.

s/ Christopher D. Baucom
COUNSEL FOR DEFENDANT
WABASH NATIONAL
CORPORATION