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Punitive Damages Cap Under Attack

Plaintiffs Want Verdict To Stand

BY JOHN L. JACKSON
STAFF REPORTER

The recent assault on the 1987 Tort Reform Act has not yet lifted the \$250,000 cap on punitive damages. But personal injury lawyer James E. Butler Jr. attacked the cap on constitutional grounds Thursday, citing recent court decisions that whittle away at limits on punitive damages.

Butler, a principal in Columbus' Butler, Wooten, Overby & Cheely, argued in White County Superior court that a \$15.4 million jury verdict in favor of his client, including \$14 million in punitive damages, should stand despite the statutory limit. The defendants in *Bagley v. Short* No. 88-cv-5648-B, have asked Superior Court Judge Richd W. Story to cut the damages to the \$250,000 limit provided for in OCGA 52-12-5.1 (g), a key provision in the Tort Reform Act.

"I think the statute is very clear about what we should do," said Steven J. Kyle, a name partner in Bovis, Kyle, &

Burch, who represents a man accused of causing the wrongful deaths of Eunice A. Bagley and Mary Catherine Griffin.

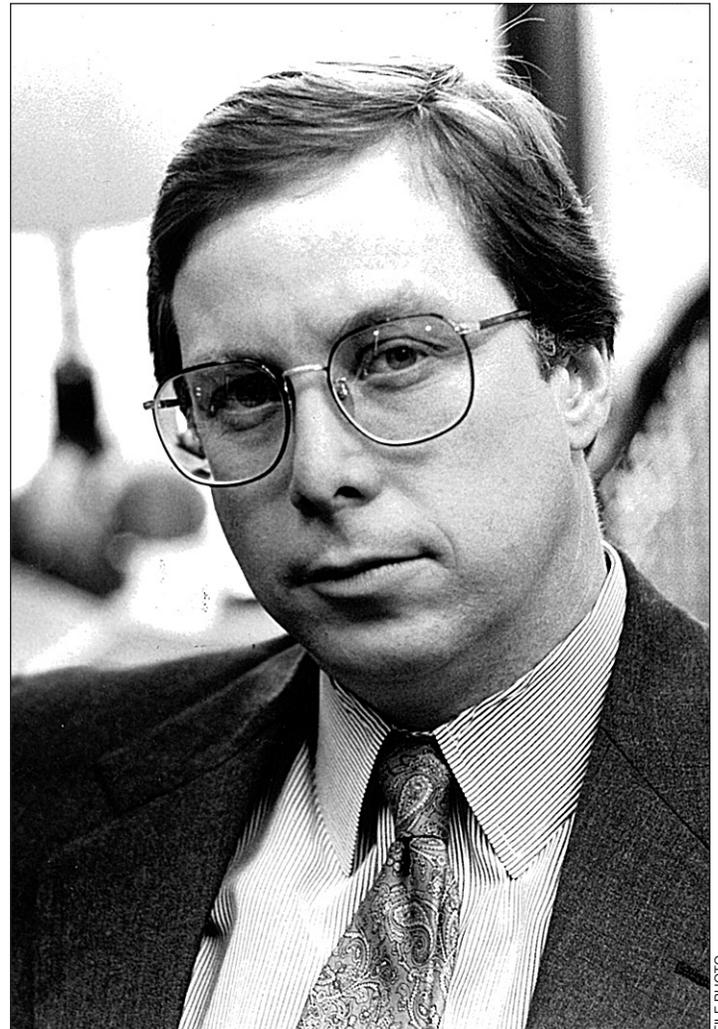
But Butler argued that even if the statute were constitutional, the punitive damage award should stand because the defendant acted with "specific intent to cause harm." That standard, OCGA 52-12-5.1(f), allows an unlimited award of punitive damages.

"I don't think you can ignore that hurdle," says Butler. "Somebody's got to jump over it."

For the constitutional attack, Butler brought in University of Georgia law Prof. Albert M. Pearson III, who argued that the cap on punitive damages violates plaintiffs' due process and equal rights. The plaintiffs likened the right to punitive damages to the right to a trial by jury.

"That's our theory—that the right to damages is a fundamental right," said Pearson.

Story deferred ruling, and asked attorneys to file final briefs on the punitive damages question by July 1.



James E. Butler Jr. argued that even if the punitive damages cap statute were constitutional, a \$14 million jury award should stand because the defendant acted with "specific intent to cause harm."

In the wrongful-death case, Sidney William Short, allegedly under the influence of cocaine and marijuana, was accused of driving across the center line of state Highway 75, head on into the plaintiffs' car.

Early in the hearing, But-

ler raised U.S. District Court Judge J. Robert Elliott's decision Tuesday invalidating the provisions of tort reform dealing with punitive damages in product liability cases. (See related story, page 3.)

Gregory W. Glass, an associate with Bovis, Kyle, defended

FILE PHOTO

the Tort Reform Act and contended that the cap does not violate the rights of plaintiffs to recover for wrongful acts.

Glass argued that when the legislature passed the Tort Reform Act, lawmakers were trying to lower insurance rates.

“The issue is whether this law meets that goal,” Glass submitted.

Glass said that with the \$250,000 cap, insurers can better plan their risks because they know what the maximum loss will be if they lose a suit.

Butler called that “irrational” because insurers still can’t predict how many cases will involve specific intent-egregious situations where the cap does not apply.

Butler challenged Kyle and Glass to show how the cap had supposedly lowered rates since 1987. “If the defense wants to prove because of the cap on punitive damages, rates have gone down-please do,” he said.

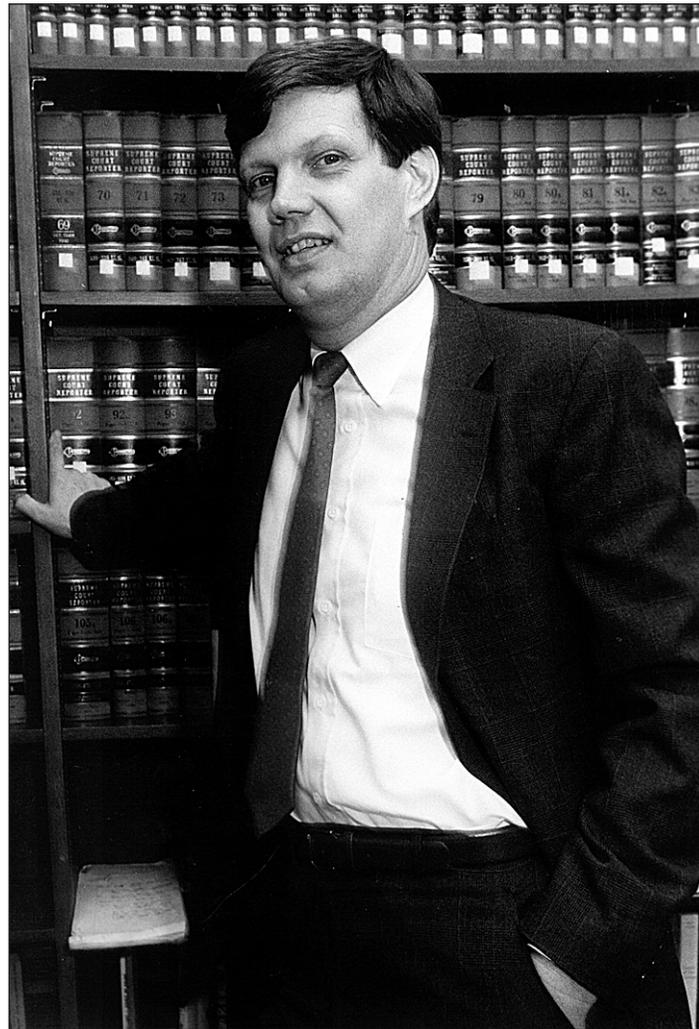
Pearson added, “There isn’t any need for the cap. The companies that need the cap can have policy exclusions.”

In a philosophical argument on the nature of rights, Pearson claimed that the deterrence aspect of punitive damages helps guarantee the freedom of individuals.

“I have a personal liberty interest that the state protects,” he said, pointing out that he has the “right” not to be hit by a drunken driver.

Judge Story noted that if a person is convicted of aggravated assault, there is “a cap” in dealing with him-the maximum prison term set by the legislature.

But Pearson distinguished



SUSAN MCCARTER/DAILY REPORT

University of Georgia law Prof. Albert M. Pearson III argued that “the right to damages is a fundamental right.”

criminal and civil cases: In criminal cases, lawmakers try to deter entire classes of people, he argued, whereas in civil cases, individual offenders have to be punished with damages sufficient to stop the harmful behavior.

“Deterrence is essential to my liberty. I can’t put it in any other way,” Pearson said.

“The liberty idea is obviously a novel idea and not one I’d thought of,” Story said.

Butler contended the case was tried under the agreement that the matter of specific intent was going to be left

to the court’s judgment after the verdict. The jury returned general punitive damages, and did not refer to intent to cause harm.

Butler says that, before the verdict, he did not think the jury was sympathetic.

Butler was going to ask for \$50 million in punitive damages until his closing arguments. As he was telling the jury how his firm believed they were on “a mission” to stop reckless driver, one juror scoffed, he said.

“It so dismayed me I chickened out and I didn’t ask for a specific sum,” Butler says. □