

STATE OF SOUTH DAKOTA)
)ss
STANLEY COUNTY)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

BRYAN ANTHONY REO,

58 CIV 20-000007
Hon. Bridget Mayer

Plaintiff,

vs.

**MARTIN LINDSTEDT and SUSAN APRIL
BESSMAN, as TRUSTEE OF THE SUSAN
APRIL BESSMAN REVOCABLE LIVING
TRUST,**

**Defendant Bessman's
Response to Plaintiff's Motion
for Summary Judgment**

Defendants.

Summary

Defendant Susan April Bessman, as Trustee of the Susan April Bessman Revocable Living Trust ("Susan"), through counsel, submits this *Response to Plaintiff's Motion for Summary Judgment*. Summary judgment should be denied because it would serve to condone Reo's multiple instances of apparent violation of the rules of professional conduct in obtaining the underlying judgments and in pursuing this action, namely:

First, Reo's claim should be dismissed for non-joinder, due to his failure to join Stefani Reo as an indispensable party, which is underscored by the ongoing conflict of interest presented by Reo pursuing a debtor to the detriment of his client, Stefani; and

Second, the invalidity of the underlying judgments under Ohio law (punitive damages cap), which Reo obtained by failing to disclose controlling adverse legal authority to the Ohio District Courts, and South Dakota law (champerty), require denial of his summary judgment motion as a matter of law.

Relevant Background

Plaintiff Bryan Reo (“Reo”) has brought numerous lawsuits against Defendant Martin Lindstedt (“Lindstedt”) in Ohio, on behalf of himself, his father Anthony Reo (“Anthony”), and on behalf of his wife Stefani Rossi Reo (“Stefani”).

No.	Case Caption	Nature of Case	Award	Judgment status
1	<i>Bryan Reo v. Martin Lindstedt, et. al.</i> Lake County Court (Ohio) 15 CV 1590 / 16 CV 825 Hon. Patrick Condon *filed in 2015 & 2016	Defamation per se, invasion of privacy	\$105,000 ¹ Total \$55K comp \$50K punitive	7/1/19: Reduced to judgment 8/19/19: Transcribed in SD (58CIV19-35)
2	<i>Bryan Reo v. Martin Lindstedt</i> 1:19 CV 2103 (N.D. Ohio) Hon. Solomon Oliver, Jr. *filed Aug. 12, 2019	Libel per se, invasion of privacy, IIED	\$1,000,000 Total \$250K comp \$750K punitive	4/23/21: Reduced to judgment 5/3/21: Transcribed in SD (58CIV21-16)
3	<i>Stefani Rossi Reo v. Martin Lindstedt</i> 1:19 CV 2786 (N.D. Ohio) Hon. Christopher Boyko *filed Sept. 9, 2019	Libel per se	\$500,000 Total \$250K comp \$250K punitive	Not reduced to judgment
4	<i>Anthony Dominic Reo v. Martin Lindstedt</i> 1:19 CV 2615 (N.D. Ohio) Hon. John R. Adams *filed Sept. 18, 2019	Libel per se	\$500,000 Total \$250K comp \$250K punitive	6/23/21: Reduced to judgment 7/2/21: Transcribed in SD (58CIV21-24)
5	<i>Bryan Reo v. Martin Lindstedt,</i> N.D. Ohio 1:19 CV 2589 Hon. Christopher Boyko *filed Sept. 18, 2019	Libel per se	\$750,000 Total \$250K comp \$500 punitive	Not reduced to judgment

¹ An additional \$400 was awarded against Lindstedt’s co-defendant, the Church of Jesus Christ, Christian/Aryan Nations of Missouri.

In this action (in which Stefani is not a party), Reo seeks to execute upon South Dakota real property toward satisfaction of those judgments; the subject real estate has been appraised at \$1,292,000.00. By seeking to execute upon that property to satisfy these judgments in favor of Reo alone, all of the assets available for execution will be **depleted**. *Reo Aff.* at ¶¶ 11-13. This will result in Stefani – a pending creditor of Lindstedt — with no ability whatsoever to protect her interest due to the actions of her own attorney. Such conduct is violative of an attorney’s duty to his or her clients, and highlights the necessity of Stefani as a party to this action. Given that she is an indispensable party beyond the jurisdiction of this Court, Rule 19 requires dismissal of the action.

Furthermore, the punitive damage awards obtained by Reo in each of the actions (except for Case No. 1 in the table above) blatantly exceed the statutory caps enacted by the Ohio Legislature. These caps are jurisdictional in nature, and limit punitive damage awards to the lesser of 1) two times (2x) compensatory damages, or 2) ten percent (10%) of the defendant’s net worth. In obtaining those judgments, Reo plainly failed to disclose the statutory caps to the issuing court. As a result, each of those judgments are void, unenforceable, and cannot be the basis upon which he seeks to execute against the real property in question, therefore mandating denial of Reo’s motion for summary judgment as a matter of law.

Argument and Analysis

1. Response to UFTA Claim.

As it concerns Reo’s claim under the Uniform Fraudulent Transfers Act (“UFTA”), Susan maintains and asserts the following:

1. Susan did not know of the judgments against her brother, or any pending civil litigation against him, at the time of the transfer. Exhibit 1 to the

Affidavit of Sarah Baron Hony (Susan Bessman Dep.) at 72:21-73:10.

2. Susan did not aid, abet, or conspire with Martin Lindstedt to defraud Bryan Reo. *Id.* at 18:7-12, 22:23-23:6, 26:8-10, 73:23-74:5.
3. Two of the three underlying judgments violate Ohio substantive law concerning punitive damages caps. Susan is seeking relief from those judgments under Rule 60(b).
4. The judgment assigned to Reo from his father violates South Dakota law prohibiting champerty.

2. Stefani Rossi Reo is an Indispensable Party.

Rule 19(a) provides:

A person who is subject to service of process shall be joined as a party in the action if:

- (1) In his absence complete relief cannot be accorded among those already parties; or
- (2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

SDCL §15-6-19(a).

Stefani is an indispensable party under Rule 19(a)(2). Stefani is a creditor or potential creditor of Lindstedt, and by allegation a creditor of Bessman, to the extent of the value of the real estate. *Reo Aff.*, ¶14C. Stefani's absence as a party in this

action impairs or impedes her ability to protect her interest in the subject real estate, because its value is being depleted by Reo, her attorney. Indeed, if Reo is successful in this suit, he will have completely destroyed her ability to collect against an insolvent Lindstedt. *Reo Aff.*, ¶16, 21. *See also Plaintiff's Brief in Support of Motion for Summary Judgment* at 6-7. Given the threat to Stefani's interests, she must be joined in the action pursuant to § 15-6-19(a)(2)(i) if she is subject to service of process.

However, Stefani is an Ohio resident outside the jurisdiction of this Court. As a result, the Court must assess whether the action should proceed, as set forth in Rule 19(b):

If a person as described in subdivisions 15-6-19(a)(1) and (2) cannot be made a party, the court shall determine *whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.* The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

SDCL §15-6-19(b) (emphasis).

Given that this situation has been created by the actions of an attorney to the detriment of his current client, both equity and good conscience militate toward dismissal. The first consideration - prejudice to Stefani – is manifest: her attorney collects against their common debtor, and Stefani gets nothing! As to the second and third factors, it is difficult to ascertain any protective provisions that might be afforded Stefani in this action, where the underlying debtor is insolvent. While the Court could award a reduced judgment to Reo, it would need to be based upon a mathematical analysis of all of the judgments in question (including the award to

Stefani that has not yet been reduced to judgment). As set forth below, there are numerous questions concerning the validity of Reo's judgments against Lindstedt under Ohio law, rendering it impossible for the Court to enter any sort of "pro rata" judgment at this time. Lastly, the question of whether Reo will have an "adequate remedy" if the case is dismissed for nonjoinder cannot be answered until the ethical implications of his conduct are resolved – namely, whether he is entitled to *any remedy at all* in light of his ethical obligations to his client.

3. Reo's Conduct in Seeking to Deplete Lindstedt's Assets Violates his Duties to Stefani.

This case presents a set of facts warranting dismissal on the grounds of "equity and good conscience" if Reo fails to voluntarily dismiss: Reo remains Stefani's attorney in the Ohio litigation. *Reo Aff.* at ¶13. Even though Reo is not representing himself *pro se* in this case, his ethical duty to Stefani to avoid conflicting interests (*e.g.*, depleting all the assets of their common debtor to her detriment), cannot be avoided through the actions of his South Dakota counsel. This is so because an attorney cannot do indirectly that which he cannot properly do directly.

To begin, Reo has a conflict of interest. In collecting against a common debtor an attorney cannot prefer one client over another. See, *In re Vanderbilt Assocs., Ltd.*, 111 B.R. 347, 355 (Bankr.D.Utah 1990) (emphasis added):

The situation is analogous to the representation of two creditors entitled to collect against the same judgment debtor. "There are situations in which a lawyer will have a **conflict of interest when the lawyer prefers one client over another** client in **collecting** assets from a common debtor." *In re Griffith*, 304 Ore. 575, 748 P.2d 86, 101 (1987). Thus, an actual conflict arises because speed, litigation tactics, or diligence on behalf of one client may deplete the assets available for the remaining client to its detriment. *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161, 1170-71 (Ariz. 1988).

Here, the record is replete with claims of Lindstedt's insolvency and a lack of assets to satisfy Reo's own personal claims. This insolvency/insufficiency of assets is determinative. *See e.g., In re Complaint of Griffith*, 304 Ore. 575, 595, 748 P.2d 86 (1987)(emphasis added):

There are situations in which a lawyer will have a **conflict of interest** when the lawyer prefers **one client over another** client in **collecting** assets from a common debtor. That is not this case. There is no showing in this record that Griffith preferred First Northwest over Bear Creek Valley Bank in collecting assets from the Browns. ... **There is no evidence that the Browns were insolvent.**

Reo's status as a party does not permit him to escape application of the Rules of Professional Conduct or other disciplinary rules. Whether governed by South Dakota Prof. Cond. Rule 8.4² or Ohio Prof. Cond. Rule 8.4,³ the result is the same: Reo's lawyer cannot do, on his behalf, that which he is precluded from doing as an attorney for himself. Consequently, a motion to disqualify counsel for perpetuating Reo's depletion-of-assets-conflict-of-interest-scheme would not cure the violation; any substitute counsel – even Reo himself – would continue the existing conflict of interest. To be sure, disqualification of counsel is the traditional remedy when a lawyer has violated a disciplinary rule. *See Homestake Mining Co. v. Bd. of Environmental Protection*, 289 N.W.2d 561, 563 (S.D.1980) (with emphasis added) (“If Mr. Kapsner is in violation of the disciplinary rule he should be disqualified as Homestake's counsel and the circuit court should enter an order accordingly.”); *Hulzebos v. City of Sioux Falls*, 2013 U.S. Dist. LEXIS 134085, at *6 (D.S.D. Sep. 19, 2013). However, in this

² South Dakota Rules of Professional Conduct, Rule 8.4(a) (“It is professional misconduct for a lawyer to: (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]”).

³ “It is professional misconduct for a lawyer to do any of the following: (a) violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]” Ohio Prof. Cond. Rule 8.4(a).

case, the basis for disqualification is not unique to Reo's current counsel, and *any counsel would be disqualified* from representing Reo herein.

This action should be voluntarily dismissed by the plaintiff. Even if Stefani were subject to this Court's jurisdiction, merely adding Stefani at this juncture would be to condone, if not ratify, the current disciplinary rule violation. If Reo does not file and serve a voluntary notice of dismissal, the only adequate remedy for this Court would be dismissal.

4. Several of Reo's Judgments are Wholly or Partially Invalid under Ohio Law.

The underlying judgments arise out of Ohio and are the result of state law tort claims filed by Reo (and his various family members) against Lindstedt. Ohio has enacted tort reform statutes, which includes, *inter alia*, statutory caps, and statutory aggregate limits, on punitive damages awards. R.C. 2315.21(D)(2)(a) and (D)(2)(b).⁴ The Revised Code deprives a court of jurisdiction to enter judgment in excess of either. The relevant provisions state:

Ohio R.C. 2315.21(D)(2)(b) ["Punitive Cap"]: If the defendant is a small employer or individual, the court shall not enter judgment for punitive or exemplary damages in excess of *the lesser of two times the amount of the compensatory damages awarded to the plaintiff from the defendant or ten per cent of the employer's or individual's net worth when the tort was committed* up to a maximum of three hundred fifty thousand dollars, as determined pursuant to division (B)(2) or (3) of this section.

Ohio R.C. 2315.21(D)(5)(a) ["Punitive Aggregate Cap"]: In any tort action, except as provided in division (D)(5)(b) or (6) of this section, punitive or exemplary damages shall not be awarded against a defendant if that defendant files with the court a certified judgment, judgment entries, or other evidence showing that punitive or exemplary damages have already been awarded and have been collected, in any state or federal court, against that defendant *based on the same act or course of conduct*

⁴ Because this issue involves application of Ohio law, an appendix is provided herewith including the text of the relevant Ohio statutes.

that is alleged to have caused the injury or loss to person or property for which the plaintiff seeks compensatory damages and that the aggregate of those previous punitive or exemplary damage awards exceeds the maximum amount of punitive or exemplary damages that may be awarded under division (D)(2) of this section against that defendant in the tort action.

The punitive damages caps are jurisdictional: “The court of common pleas shall not have jurisdiction, in any tort action to which the amounts apply, to award punitive or exemplary damages that exceed the amounts set forth in section 2315.21 of the Revised Code.” R.C. 2305.01. Thus, the underlying judgments for punitive damages must pass subject matter jurisdictional muster both individually, and in the aggregate.

The table below illustrates the impropriety of the judgments. Even a cursory glance at the table reveals that Case No. 2 is blatantly violative of the punitive damages caps (\$750,000 punitives and \$250,000 compensatory). It should be readily apparent to an Ohio-licensed attorney that such an award is prohibited under Ohio law, and the information we are presenting to this Court now should have been presented to the issuing court at the Northern District of Ohio. The second judgment also likely violates the aggregate cap because it arises out of the same course of conduct giving rise to the first judgment. This analysis can be cascaded through the timeline of the cases and judgments, voiding nearly every judgment and monetary award that Reo has obtained against Lindstedt. It is thus palpably improper to grant Reo the requested relief under the UFTA when the “debt” in question is void, voidable, or otherwise entirely invalid.

ABBREVIATED TABLE OF JUDGMENTS

Date of Judgment	Court	Compensatory award	Punitive Award	Exceed cap?
7/1/19	Lake County 15CV1590 16CV825	\$55,000	\$50,000	No, punitive award is not more than 2x compensatory or 10% of net worth.
4/23/21	N.D. Ohio 1:19CV2103	\$250,000	\$750,000	Yes, both. Judgment is void.
6/23/21	N.D. Ohio 1:19CV2615 (Anthony Reo)	\$250,000	\$250,000	Yes, exceeds 10% of net worth. Also violates aggregate cap. Judgment is void.

For purposes of this table, the following figures apply:

*Value of real estate = \$1,292,000⁵

*Lindstedt's Net Worth = \$129,200⁶

5. The Assignment of Anthony Reo's Judgment to Bryan Reo Constitutes Unlawful Champerty and is Void and Unenforceable in South Dakota.

The doctrine of champerty prohibits an agreement “in which a person without interest in another’s suit undertakes to carry it on at its own expense, in whole or in part, in consideration of receiving, in the event of success, a part of the proceeds of the litigation.” CJS CHAMPERTY §1, *Definition and Nature of Champerty*. See also CJS CHAMPERTY §4, *Offenses of Champerty, Maintenance, and Barratry Compared and Distinguished* (“Maintenance is helping another prosecute a suit; champerty is maintaining a suit in return for a financial interest in the outcome, and barratry is a continuing practice of maintenance or champerty.”). In some states, champerty and maintenance suits have

⁵ Ohio law looks to the defendant’s net value when the tort was committed. For the sake of simplicity in presenting this argument, we will utilize the value of the land in 2021, as evinced by the appraisal. Susan reserves the right to challenge the use of the 2021 appraisal as evidence of Lindstedt’s net value at the time of the commission of the tort.

⁶ This figure is also used for simplicity’s sake, and was calculated using the 10% of the 2021 appraisal. However, Lindstedt’s net worth decreases after each judgment is entered against him, which will thus affect calculation of 10% of his net worth for punitive cap purposes. For example, after the first judgment was entered, his net worth will decrease by \$105,400.

been replaced with actions for malicious prosecution, abuse of process, frivolous litigation rules, and ethical rules governing attorneys. *Id.*

South Dakota law formerly deemed champerty a crime. *See Hudson v. Sheafe*, 171 N.W. 320 (S.D. 1919). In *Hudson*, the plaintiff, Hudson, was an attorney who claimed he had been assigned a judgment from an individual named Sherwood, who had, in turn, obtained a judgment against the defendant Sheafe in Illinois. Sheafe defended the claim by arguing that Hudson either obtained the assignment via fraud or via the criminal act of champerty. The Supreme Court upheld the issuance of a jury instruction providing that if the jury found plaintiff to have purchased this judgment “for the purpose of bringing suit thereon, the transaction would be champertous, unless he took such judgment in payment for attorney's fees, or for an antecedent debt owing to him by Sherwod; but that, if he did take it in good faith for attorney's fees, or for such fees and a debt, Sherwood was owing him, it was not a champertous transaction, even though he purchased the judgment with intent to bring suit thereon.” *Hudson*, at 322. The Court also rejected the idea that the assignment of a claim after it had been reduced to judgment is not champertous, *unless* the assignment was *not taken* for the purpose of bringing suit on the judgment. *Id.* at 323. Lastly, the Court rejected Sheafe's argument that only the original assignor could challenge the validity of the assignment; in so holding, the Court noted that when a plaintiff's claim “is inseparably connected with an unlawful contract, it must fall.” *Id.* at 323 (“If the champertous agreement is not collateral to the claim sued on but is the foundation thereof, the action must fail, although defendant in the suit is a stranger to the champertous contract. If an action is brought by an assignee in his own name, and the assignment is shown to be champertous, the court will treat it as void for all purposes and refuse on grounds of public policy to enforce it.”).

Even though the champerty is no longer criminalized in South Dakota, the common law tort of champerty still exists and has not been eradicated. “In South Dakota, the rules of common law are in force, except where they conflict with the will of the sovereign power, which is expressed in the constitution, statutes and ordinances of the state.” *McKellips v. Mackintosh*, 475 N.W.2d 926, 929 (S.D. 1991) (holding that the common law doctrines of champerty and maintenance currently apply in South Dakota). *McKellips* specifically held that a champertous contract is void as against public policy, and thus unenforceable. *Id.* As a result, no champertous contract is enforceable in South Dakota, even if it is valid in another state. *See Hudson*, at 323 (“Foreign laws are not enforced where they conflict with our own regulations, our local policies, or do violence to our views of religion or public morals.”). *State ex. rel. Meierhenry v. Spiegel, Inc.*, 277 N.W.2d 298, 300 (S.D. 1979); *Mechanics & Metals Nat. Bank*, 21 F.2d 128 (D.S.D. 1927).

Reo received an assignment of his father’s judgment against Lindstedt in the amount of \$500,000. *See Exhibit C to Bryan Reo Aff.* (dated Jul. 26, 2020). The assignment states that the assignment is being made “for good and valuable consideration,” but does not identify the consideration with any specificity. There is no evidence that Anthony Reo owed his son an antecedent debt, and it seems unlikely that Bryan Reo, acting as an attorney for his father, incurred fees of a half of a million dollars in bringing his father’s defamation suit against Lindstedt. *See Bryan Reo Aff.* at ¶14 D.

Because champerty is prohibited as against public policy in the State of South Dakota, and in the absence of any proof that the assignment from Anthony to Brian was made for a permissible purpose, the assignment is void and unenforceable and cannot form the basis of any UFTA relief sought by Bryan Reo in this action.

Conclusion

There are numerous legal deficiencies that prevent this Court from granting Reo the relief he seeks.

First, by seeking to execute on his domesticated Ohio judgment(s), Attorney Reo, seeks to deplete – for himself and to the exclusion of his client, Stefani – all of Lindstedt’s assets, which goes beyond impairing or impeding Stefani’s ability to protect her interest, §15-6-19(a)(2)(i), and leaves her with absolutely no ability whatsoever to protect the same. At the same time, Reo’s conduct constitutes an impermissible conflict of interest with his client, Stefani, which he cannot avoid by hiring counsel. The equities mandate dismissal of this action in its entirety, under Rule 19 but also pursuant to this court’s “inherent authority to ensure that counsel appearing and advocating before the court comply with the professional responsibilities of an attorney.” *People in Interest of CRW*, 2021 SD 42, ¶22.

Second, the judgments themselves are of questionable origin and validity. Reo obtained multiple judgments (and monetary awards) that exceed the Ohio’s statutory caps. Relief can not be granted, nor summary judgment awarded, when the validity of the underlying judgment is in question. This concern is exacerbated upon consideration of *how* Reo obtained them, i.e., his failure to disclosure controlling adverse authority to the Ohio District Courts. Finally, the judgment assigned by Anthony Reo to Bryan Reo is void and unenforceable by Bryan Reo, as it is champertous and thus void and unenforceable in South Dakota.

WHEREFORE, Susan respectfully requests Plaintiff’s Motion for Summary Judgment be DENIED.

Respectfully submitted this 20th day of August 2021.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: **/s/ Sarah Baron Houy**
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CERTIFICATE OF SERVICE

I certify that, on August 20, 2021, I served copies of this document upon the listed people via Odyssey File & Serve:

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ATTORNEY FOR PLAINTIFF

and upon the following people via U.S. Mail:

Martin Lindstedt
338 Rabbit Track Road
Granby, MO 64844
PRO SE DEFENDANT

/s/ Sarah Baron Houy _____
Sarah Baron Houy

APPENDIX: RELEVANT OHIO STATUTES

R.C. 2305.01, provides, in pertinent part (emphasis added):

The court of common pleas **shall not have jurisdiction, in any tort action to which the amounts apply, to award punitive or exemplary damages that exceed the amounts set forth in section 2315.21 of the Revised Code.** The court of common pleas shall not have jurisdiction in any tort action to which the limits apply to enter judgment on an award of compensatory damages for noneconomic loss in excess of the limits set forth in section 2315.18 of the Revised Code.

The April 7, 2005 version of R.C. 2315.21, provides, in pertinent part (emphasis added):

(A) As used in this section:

(1) "Tort action" means a civil action for damages for injury or loss to person or property.

(a) "Tort action" includes all of the following:

(i) A product liability claim for damages for injury or loss to person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code;

(ii) A civil action based on an unlawful discriminatory practice relating to employment brought under section 4112.052 of the Revised Code;

(iii) A civil action brought under section 4112.14 of the Revised Code.

(b) "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(2) "Trier of fact" means the jury or, in a nonjury action, the court.

(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(4) "Employer" includes, but is not limited to, a parent, subsidiary, affiliate, division, or department of the employer. If the employer is an individual, the individual shall be considered an employer under this section only if the subject of the tort action is related to the individual's capacity as an employer.

(5) "Small employer" means an employer who employs not more than one hundred persons on a full-time permanent basis, or, if the employer is classified as being in the manufacturing sector by the North American industrial classification system, "small employer" means an employer who employs not more than five hundred persons on a full-time permanent basis.

(B)

(1) In a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action shall be bifurcated as follows:

(a) The initial stage of the trial shall relate only to the presentation of evidence, and a determination by the jury, with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant. During this stage, no party to the tort action shall present, and the court shall not permit a party to present, evidence that relates solely to the issue of whether the plaintiff is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(b) If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(2) In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

(3) In a tort action that is tried to a court and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall make its determination with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant and, if that determination is in favor of the plaintiff, shall make findings of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant.

(C) Subject to division (E) of this section, punitive or exemplary damages are not

recoverable from a defendant in question in a tort action unless both of the following apply:

- (1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.
- (2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

(D)

(1) In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages.

(2) Except as provided in division (D)(6) of this section, all of the following apply regarding any award of punitive or exemplary damages in a tort action:

(a) The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to division (B)(2) or (3) of this section.

(b) If the defendant is a small employer or individual, the court shall not enter judgment for punitive or exemplary damages in excess of the lesser of two times the amount of the compensatory damages awarded to the plaintiff from the defendant or ten per cent of the employer's or individual's net worth when the tort was committed up to a maximum of three hundred fifty thousand dollars, as determined pursuant to division (B)(2) or (3) of this section.

(c) Any attorney's fees awarded as a result of a claim for punitive or exemplary damages shall not be considered for purposes of determining the cap on punitive damages.

(3) No award of prejudgment interest under division (C)(1) of section 1343.03 of the Revised Code shall include any prejudgment interest on punitive or exemplary damages found by the trier of fact.

(4) In a tort action, the burden of proof shall be upon a plaintiff in question, by clear and convincing evidence, to establish that the plaintiff is entitled to recover punitive or exemplary damages.

(5)(a) In any tort action, except as provided in division (D)(5)(b) or (6) of this section, punitive or exemplary damages shall not be awarded against a defendant if that defendant files with the court a certified judgment,

judgment entries, or other evidence showing that punitive or exemplary damages have already been awarded and have been collected, in any state or federal court, against that defendant based on the same act or course of conduct that is alleged to have caused the injury or loss to person or property for which the plaintiff seeks compensatory damages and that the aggregate of those previous punitive or exemplary damage awards exceeds the maximum amount of punitive or exemplary damages that may be awarded under division (D)(2) of this section against that defendant in the tort action.

(b) Notwithstanding division (D)(5)(a) of this section and except as provided in division (D)(6) of this section, punitive or exemplary damages may be awarded against a defendant in either of the following types of tort actions:

(i) In subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded, if the court determines by clear and convincing evidence that the plaintiff will offer new and substantial evidence of previously undiscovered, additional behavior of a type described in division (C) of this section on the part of that defendant, other than the injury or loss for which the plaintiff seeks compensatory damages. In that case, the court shall make specific findings of fact in the record to support its conclusion. The court shall reduce the amount of any punitive or exemplary damages otherwise awardable pursuant to this section by the sum of the punitive or exemplary damages awards previously rendered against that defendant in any state or federal court. The court shall not inform the jury about the court's determination and action under division (D)(5)(b)(i) of this section.

(ii) In subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded, if the court determines by clear and convincing evidence that the total amount of prior punitive or exemplary damages awards was totally insufficient to punish that defendant's behavior of a type described in division (C) of this section and to deter that defendant and others from similar behavior in the future. In that case, the court shall make specific findings of fact in the record to support its conclusion. The court shall reduce the amount of any punitive or exemplary damages otherwise awardable pursuant to this section by the sum of the punitive or exemplary

damages awards previously rendered against that defendant in any state or federal court. The court shall not inform the jury about the court's determination and action under division (D)(5)(b)(ii) of this section.

(6) Division (D)(2) of this section does not apply to a tort action where the alleged injury, death, or loss to person or property resulted from the defendant acting with one or more of the culpable mental states of purposely and knowingly as described in section 2901.22 of the Revised Code and when the defendant has been convicted of or pleaded guilty to a criminal offense that is a felony, that had as an element of the offense one or more of the culpable mental states of purposely and knowingly as described in that section, and that is the basis of the tort action.

(E) This section does not apply to tort actions against the state in the court of claims, including, but not limited to, tort actions against a state university or college that are subject to division (B)(1) of section 3345.40 of the Revised Code, to tort actions against political subdivisions of this state that are commenced under or are subject to Chapter 2744. of the Revised Code, or to the extent that another section of the Revised Code expressly provides any of the following:

(1) Punitive or exemplary damages are recoverable from a defendant in question in a tort action on a basis other than that the actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud or on a basis other than that the defendant in question as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) Punitive or exemplary damages are recoverable from a defendant in question in a tort action irrespective of whether the plaintiff in question has adduced proof of actual damages.

(3) The burden of proof upon a plaintiff in question to recover punitive or exemplary damages from a defendant in question in a tort action is one other than clear and convincing evidence.

(4) Punitive or exemplary damages are not recoverable from a defendant in question in a tort action.

(F) If the trier of fact is a jury, the court shall not instruct the jury with respect to the limits on punitive or exemplary damages pursuant to division (D) of this section, and neither counsel for any party or a witness shall inform the jury or potential jurors of those limits.

(G) When determining the amount of an award of punitive or exemplary damages against either a home or a residential facility licensed under section 5123.19 of the Revised Code, the trier of fact shall consider all of the following:

- (1) The ability of the home or residential facility to pay the award of punitive or exemplary damages based on the home's or residential facility's assets, income, and net worth;
- (2) Whether the amount of punitive or exemplary damages is sufficient to deter future tortious conduct;
- (3) The financial ability of the home or residential facility, both currently and in the future, to provide accommodations, personal care services, and skilled nursing care.

The April 15, 2021 version of R.C. 2315.21, provides, in pertinent part (with emphasis added):

(A) As used in this section:

(1) "Tort action" means a civil action for damages for injury or loss to person or property.

(a) "Tort action" includes all of the following:

(i) A product liability claim for damages for injury or loss to person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code;

(ii) A civil action based on an unlawful discriminatory practice relating to employment brought under section 4112.052 of the Revised Code;

(iii) A civil action brought under section 4112.14 of the Revised Code.

(b) "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(2) "Trier of fact" means the jury or, in a nonjury action, the court.

(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(4) "Employer" includes, but is not limited to, a parent, subsidiary, affiliate, division, or department of the employer. If the employer is an individual, the individual shall be considered an employer under this section only if the subject of the tort action is related to the individual's capacity as an employer.

(5) "Small employer" means an employer who employs not more than one hundred persons on a full-time permanent basis, or, if the employer is classified as being in the manufacturing sector by the North American industrial classification system, "small employer" means an employer who employs not more than five hundred persons on a full-time permanent basis.

(B)

(1) In a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action shall be bifurcated as follows:

(a) The initial stage of the trial shall relate only to the presentation of evidence, and a determination by the jury, with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant. During this stage, no party to the tort action shall present, and the court shall not permit a

party to present, evidence that relates solely to the issue of whether the plaintiff is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(b) If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(2) In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

(3) In a tort action that is tried to a court and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall make its determination with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant and, if that determination is in favor of the plaintiff, shall make findings of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant.

(C) Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

(D)

(1) In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages.

(2) Except as provided in division (D)(6) of this section, all of the following apply regarding any award of punitive or exemplary damages

in a tort action:

(a) The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to division (B)(2) or (3) of this section.

(b) If the defendant is a small employer or individual, the court shall not enter judgment for punitive or exemplary damages in excess of the lesser of two times the amount of the compensatory damages awarded to the plaintiff from the defendant or ten per cent of the employer's or individual's net worth when the tort was committed up to a maximum of three hundred fifty thousand dollars, as determined pursuant to division (B)(2) or (3) of this section.

(c) Any attorney's fees awarded as a result of a claim for punitive or exemplary damages shall not be considered for purposes of determining the cap on punitive damages.

(3) No award of prejudgment interest under division (C)(1) of section 1343.03 of the Revised Code shall include any prejudgment interest on punitive or exemplary damages found by the trier of fact.

(4) In a tort action, the burden of proof shall be upon a plaintiff in question, by clear and convincing evidence, to establish that the plaintiff is entitled to recover punitive or exemplary damages.

(5)

(a) In any tort action, except as provided in division (D)(5)(b) or (6) of this section, punitive or exemplary damages shall not be awarded against a defendant if that defendant files with the court a certified judgment, judgment entries, or other evidence showing that punitive or exemplary damages have already been awarded and have been collected, in any state or federal court, against that defendant based on the same act or course of conduct that is alleged to have caused the injury or loss to person or property for which the plaintiff seeks compensatory damages and that the aggregate of those previous punitive or exemplary damage awards exceeds the maximum amount of punitive or exemplary damages that may be awarded under division (D)(2) of this section against that defendant in the tort action.

(b) Notwithstanding division (D)(5)(a) of this section and except as provided in division (D)(6) of this section, punitive or exemplary damages may be awarded against a defendant in either of the following types of tort actions:

(i) In subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded, if the court determines by clear and convincing evidence that the plaintiff will offer new and substantial evidence of previously undiscovered, additional behavior of a type described in division (C) of this section on the part of that defendant, other than the injury or loss for which the plaintiff seeks compensatory damages. In that case, the court shall make specific findings of fact in the record to support its conclusion. The court shall reduce the amount of any punitive or exemplary damages otherwise awardable pursuant to this section by the sum of the punitive or exemplary damages awards previously rendered against that defendant in any state or federal court. The court shall not inform the jury about the court's determination and action under division (D)(5)(b)(i) of this section.

(ii) In subsequent tort actions involving the same act or course of conduct for which punitive or exemplary damages have already been awarded, if the court determines by clear and convincing evidence that the total amount of prior punitive or exemplary damages awards was totally insufficient to punish that defendant's behavior of a type described in division (C) of this section and to deter that defendant and others from similar behavior in the future. In that case, the court shall make specific findings of fact in the record to support its conclusion. The court shall reduce the amount of any punitive or exemplary damages otherwise awardable pursuant to this section by the sum of the punitive or exemplary damages awards previously rendered against that defendant in any state or federal court. The court shall not inform the jury about the court's determination and action under division (D)(5)(b)(ii) of this section.

(6) Division (D)(2) of this section does not apply to a tort action where the alleged injury, death, or loss to person or property resulted from the defendant acting with one or more of the culpable mental states of purposely and knowingly as described in section 2901.22 of the Revised Code and when the defendant has been convicted of or pleaded guilty to a criminal offense that is a felony, that had as an element of the offense one or more of the culpable mental states of purposely and knowingly as described in that section, and that is the basis of the tort action.

(E) This section does not apply to tort actions against the state in the court of claims,

including, but not limited to, tort actions against a state university or college that are subject to division (B)(1) of section 3345.40 of the Revised Code, to tort actions against political subdivisions of this state that are commenced under or are subject to Chapter 2744. of the Revised Code, or to the extent that another section of the Revised Code expressly provides any of the following:

(1) Punitive or exemplary damages are recoverable from a defendant in question in a tort action on a basis other than that the actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud or on a basis other than that the defendant in question as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) Punitive or exemplary damages are recoverable from a defendant in question in a tort action irrespective of whether the plaintiff in question has adduced proof of actual damages.

(3) The burden of proof upon a plaintiff in question to recover punitive or exemplary damages from a defendant in question in a tort action is one other than clear and convincing evidence.

(4) Punitive or exemplary damages are not recoverable from a defendant in question in a tort action.

(F) If the trier of fact is a jury, the court shall not instruct the jury with respect to the limits on punitive or exemplary damages pursuant to division (D) of this section, and neither counsel for any party or a witness shall inform the jury or potential jurors of those limits.

(G) When determining the amount of an award of punitive or exemplary damages against either a home or a residential facility licensed under section 5123.19 of the Revised Code, the trier of fact shall consider all of the following:

(1) The ability of the home or residential facility to pay the award of punitive or exemplary damages based on the home's or residential facility's assets, income, and net worth;

(2) Whether the amount of punitive or exemplary damages is sufficient to deter future tortious conduct;

(3) The financial ability of the home or residential facility, both currently and in the future, to provide accommodations, personal care services, and skilled nursing care.