

OREGON LAW UPDATE

Oregon Court of Appeals Upholds Jury Award of \$500 in Noneconomic Damages and \$100,000 in Punitive Damages

From the desk of Jeff Eberhard: This case shows that Oregon law allows for large punitive damage awards in low compensatory damage cases.

Claims Pointer: A low amount of compensatory damages is no longer determinative of the amount of punitive damages that can be awarded. To determine the reasonableness of a punitive damage award, a reviewing court looks to the reprehensibility of a party's conduct, civil penalties in similar cases, punitive damage awards in similar cases, and whether the punitive award is grossly excessive.

case in point...

Lithia Medford LM, Inc. v. Yovan, in the Court of Appeals of the State of Oregon, 254 Or App 307, ---P.3d --- (December 19, 2012).

In 2000, Shawn Yovan (Yovan) purchased a used Toyota 4Runner from Lithia Medford LM, Inc. (Lithia), who owned and operated a Toyota dealership in Medford. Due to Yovan's limited financial resources, this purchase was made through a retail installment contract that was later purchased by a finance company.

Shortly after the purchase, Yovan discovered that the car's actual mileage far exceeded that listed on the odometer. Yovan then tried unsuccessfully to get a reduced price on the car. Instead, Lithia requested that he return the car in exchange for his original trade-in and deposit. Yovan decided to keep the car and pursue legal remedies against Lithia.

Lithia's manager thereafter attempted numerous times to convince Yovan to return the vehicle. Yovan alleged that Lithia's manager tried to intimidate Yovan with criminal prosecution for theft; tried to have the car repossessed for non-payment by lying to the collection manager of Lithia's parent company; and ultimately repurchased Yovan's retail installment contract from the finance company.

Once purchased, the manager then misrepresented to Yovan that the contract was no longer valid. Lithia brought suit against Yovan and Yovan thereafter brought counterclaims, including a claim for punitive damages based upon the Oregon Unlawful Debt Collection Practices Act.

At trial, the jury awarded Yovan \$500 in noneconomic damages and \$100,000 in punitive damages, a ratio of 200 to 1. Upon argument from Lithia, the trial court deemed the punitive damage award unconstitutional and reduced the punitive damage award to \$2,000. Yovan appealed and an equally divided court of appeals affirmed.

Yovan then successfully petitioned the Oregon Supreme Court for review. Citing its recent decision in *Hamlin v. Hampton Lumber Mills, Inc.*, 349 Or 526, 246 P3d 1121 (2011) ("Hamlin II") the Oregon Supreme Court vacated the court of appeals decision and remanded for reconsideration.

On remand, the court of appeals reversed its prior decision, recognizing that the Oregon Supreme Court's decision in *Hamlin II* reshaped the evaluation of the constitutionality of punitive damages in low compensatory damage cases. In these types of cases, the ratio of compensatory to punitive damages was no longer determinative.

Instead, applying the reasoning in *Hamlin II*, the court of appeals found that the reprehensibility of Lithia's conduct was the most important factor in determining the reasonableness of a punitive damage award. Relevant to this analysis was the fact that the Oregon legislature had authorized punitive damages under the Unfair Debt Collection Practices Act for the types of actions taken by Lithia. The Court found that Lithia engaged in malicious and deceitful conduct.

The next factor important to the court's reasoning was that civil penalties in similar cases supported the punitive damage award. Specifically, the court looked to the civil penalties under the Unfair Trade Practices Act, finding that its penalties of \$25,000 per violation were comparable. It also looked to punitive sanctions in other similar cases and Lithia's ability to pay the damage award in finding that \$100,000 was not grossly excessive.



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