

Charity: Well, welcome back. We're here today with Dave Farnbauch and we're going to talk about punitive damages in personal injury cases. Tell me, what are punitive damages?

Dave Farnbauch: Well, Charity, there's basically two different types of damages theoretically in a personal injury case. One would be compensatory damages. Those are the normal damages that you would think of. Medical expenses, lost wages, pain and suffering, impairment of the enjoyment of life, those sorts of things to compensate you for an injury. In cases where there's particularly egregious conduct, there's a thing that's known as a category of damages known as punitive damages, and punitive damages are intended to punish the wrongdoer to deter the wrongdoer and others from engaging in similar bad conduct in the future.

Charity: In Indiana, are there any limits or caps on punitive damages?

Dave Farnbauch: There are damages, I mean punitive damage caps in Indiana as part of our tort reform measures in the early nineties. The Indiana legislature passed a law that essentially said that punitive damages are capped in a civil case at three times the amount of the compensatory damage award or \$50,000, whichever is higher.

Charity: Are these punitive damages, these punishment damages, are they common in the state of Indiana?

Dave Farnbauch: Well, Charity, unfortunately punitive damage awards are almost nonexistent in the state of Indiana. The reason that punitive damage awards are non-existent is because as part of that same tort reform measure back in the early nineties, the Indiana legislature passed a law that says that 75% of a punitive damage award goes to the state of Indiana instead of the person that suffered the harm. The other 25% that goes to the victim or the plaintiff, the person that recovers the punitive damages, those damages are taxed. Whereas a normal award for compensatory damages for pain and suffering, medical expenses, lost wages, that type of a damage award is not a taxable event. The long and the short of it is most litigants in a personal injury case do not seek punitive damages because they don't want 75% of the award to go to the state of Indiana.

Charity: Sure. What about a wrongful death case. Are there punitive damages or could there be punitive damages in a wrongful death case?

Dave Farnbauch: Unfortunately, there's not. In Indiana and it's been that way for quite some time, there is no ability, the common law is such that the plaintiff cannot recover punitive damages in a wrongful death case. There are many injustices every year in Indiana where, for example, I'm just going to cite this as an example, you have a truck driver who might be intoxicated who causes an injury or a death under the influence of alcohol, egregious circumstances, et cetera.

Punitive damages, damages to punish that trucking company or that truck driver are not available in the state of Indiana in a wrongful death case.

Charity:

Seems very odd. If you have a personal injury claim or you think you might and you just want to know what to do about it, Sweeney Law Firm would be happy to consult with you and talk to you about that. All you have to do is give them a call. 420-3137. We'll be right back.