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Missouri Law Regarding Punitive Damages and the Doctrine of Remittitur

*Barnett v. La Societe Anonyme Turbomeca France*¹

I. INTRODUCTION

The imposition of punitive damages can devastate defendants, be they individuals or large corporations. Fortunately for these defendants, the jury does not have the final word on the amount of damages. This Note addresses the circumstances under which punitive damages are available in Missouri and when the doctrine of remittitur will be used so that damage awards comport with Missouri's prohibition against excessive awards and the Due Process Clause of the Fourteenth Amendment.

II. FACTS AND HOLDING

In May of 1993, a "Life Flight" helicopter was transporting a trauma victim from Maryville, Missouri to St. Luke's Hospital in Kansas City, Missouri.² While airborne, the helicopter's engine stalled and the helicopter crashed near Cameron, Missouri.³ The pilot, James Barnett, and the patient, Sherry Letz, died in the crash.⁴ A flight nurse and a respiratory therapist were also on the flight, and they both received serious injuries.⁵ Both Letz's family and Barnett's family filed wrongful death actions against Turbomeca, a French designer and manufacturer of helicopters.⁶ The Letz action was the first in time to receive a verdict and both actions resulted in verdicts for the plaintiffs.⁷ The Barnett trial was bifurcated as to compensatory and punitive damages.⁸ During the first phase of the trial, the jury determined liability for compensatory damages, the amount of compensatory damages, and liability for punitives.⁹ Only after the jury found Turbomeca liable for punitive damages was additional evidence admitted to

1. 963 S.W.2d 639 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

2. *Id.* at 645.

3. *Id.*

4. *Id.* The autopsy on Barnett revealed that he consciously suffered pain for three to five minutes as he bled to death. *Id.* at 658.

5. *Id.* at 645.

6. *Id.*

7. *Id.* at 667. See *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155 (Mo. Ct. App. 1997).

8. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 645 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

9. *Id.* at 653.

allow the jury to determine the amount of punitive damages.¹⁰ The Letz trial was not bifurcated in this way.¹¹

At trial, Turbomeca admitted that the cause of the accident was the failure of the helicopter's nozzle guide vane.¹² A nozzle guide vane channels the flow of air between the helicopter's turbine disc blades.¹³ Specifically, the vane cracked as a result of the metal used in its construction and the design of the engine.¹⁴ This cracking caused five accidents involving the same Turbomeca model between May of 1985 and May of 1988.¹⁵ At least sixteen engines were returned to Turbomeca because of cracking in 1986 alone.¹⁶ The flight hours of these sixteen engines ranged from 682 to 2005. In May of 1988, Turbomeca increased the time between overhauls for this engine from 2000 to 2500 flight hours, thereby decreasing the possibility that the cracking problem would be discovered prior to an in-flight engine shutdown.¹⁷ The engine involved in the Life Flight accident was installed in June of 1989.¹⁸ At the time of the accident in May of 1993, the Life Flight engine had 2482 flight hours.¹⁹

Barnett was forty years old at the time of his death and his life expectancy was an additional thirty-five years.²⁰ The jury awarded Barnett's family \$175 million in actual damages and \$175 million in punitive damages.²¹ These two verdicts were remitted by the trial court to \$25 million in actual damages and \$87.5 million in punitive damages.²² The Barnett family accepted this remitted judgment.²³ By the time the trial court entered judgment, Turbomeca had also received an adverse judgment for \$70 million in the Letz action.²⁴ Section 510.263.4 of the Missouri Revised Statutes provides in pertinent part:

Within the time for filing a motion for new trial, a defendant may file a post-trial motion requesting the amount awarded by the jury as

10. *Id.* MO. REV. STAT. § 510.263 (1994) allows for trials to be bifurcated in this manner when the issue of punitive damages is submissible and one of the parties requests bifurcation.

11. *Barnett*, 963 S.W.2d at 645.

12. *Id.*

13. *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155, 162 (Mo. Ct. App. 1997).

14. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 645 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

15. *Id.* at 647-49.

16. *Id.* at 647.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 645.

21. *Id.*

22. *Id.* at 645-46.

23. *Id.* at 646.

24. *Id.*

punitive damages be credited by the court with amounts previously paid by the defendant for punitive damages arising out of the same conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a credit shall be on the defendant and either party may introduce relevant evidence on such motion.²⁵

The \$70 million verdict in the Letz action did not distinguish between amounts attributable to actual damages and amounts attributable to punitive damages.²⁶ The plaintiffs argued that no credit under Section 510.263.4 should be applied against their verdict because Turbomeca had not yet actually paid any amount in the Letz action and the statutory credit applies only to amounts “previously paid.”²⁷ Rejecting this argument, the trial court attributed half of the \$70 million Letz judgment to punitive damages and reduced the remitted punitive damage award in the Barnett action another \$35 million.²⁸

Turbomeca appealed several aspects of the judgment and the Barnett family appealed only the \$35 million credit. The Missouri Court of Appeals for the Western District held that Section 510.263.4 is inapplicable when no punitive damages have been actually paid, but previous judgments and judgments pending on appeal must be treated as mitigating circumstances in remitting juries’ and trial courts’ awards so as to not violate the Due Process Clause of the Fourteenth Amendment.²⁹

III. LEGAL BACKGROUND

Section 537.090 of the 1994 Missouri Revised Statutes provides that the trier of fact in wrongful death actions may give the injured party “such damages as the trier of the facts may deem fair and just for the death and loss thus occasioned.”³⁰ The statute also provides that mitigating or aggravating circumstances may also be considered.³¹ Whether they are termed “aggravating circumstances” damages or punitive damages, Missouri recognizes such damages in certain situations.³² Generally, the purpose of punitive damages is

25. MO. REV. STAT. § 510.263.4 (1994).

26. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 645 (Mo. Ct. App. 1997), *cert. denied*, 199 S. Ct. 75 (1998).

27. *Id.* at 667.

28. *Id.* at 667-68.

29. *Id.* at 669.

30. MO. REV. STAT. § 537.090 (1994).

31. MO. REV. STAT. § 537.090 (1994).

32. *Call v. Heard*, 925 S.W.2d 840, 847 (Mo. 1996), *cert. denied*, 117 S. Ct. 770 (1997). Since *Call v. Heard*, the courts of Missouri have used the term “punitive damages.”

to inflict punishment and to deter similar conduct.³³ The jury can consider the issue of punitive damages in wrongful death actions when the defendant could have reasonably been charged with knowledge of a potentially dangerous situation but did not act to prevent the danger.³⁴

In Missouri products liability actions, there are two standards for punitive damages, one for cases premised on negligence and one for cases premised on strict liability.³⁵ In a negligence products liability action, punitive damages are allowed when there is evidence that the defendant showed complete indifference or a conscious disregard for the safety of others.³⁶ This has been interpreted to mean that the defendant must have known or had reason to know that there was a high degree of probability that the action would result in injury.³⁷ In strict products liability actions, the defendant must have exhibited complete indifference to or a conscious disregard for the safety of others and the defendant must have introduced the product into commerce with actual knowledge of the product's defect.³⁸

When trials are bifurcated pursuant to Section 510.263 of the Missouri Revised Statutes, evidence of the defendant's "financial condition" is not admissible in the initial stage unless admissible for a purpose other than punitive damages.³⁹ In the second stage of the trial, evidence of the defendant's "net worth" is admissible.⁴⁰ Net worth is a discretionary factor which the jury may or may not choose to consider.⁴¹

In *Smiley v. Cardin*,⁴² the defendant argued that evidence of his financial worth must be presented before the imposition of punitive damages.⁴³ The court stated that although there was no direct evidence of the defendant's net worth, the trial court "was made aware of defendant's large business operations and

33. *Vaughan v. Taft Broad. Co.*, 708 S.W.2d 656, 660 (Mo. 1986).

34. *Kilmer v. Browning*, 806 S.W.2d 75, 80 (Mo. Ct. App. 1991). Although not applicable to the case at hand, the standard of proof for the imposition of punitive damages has recently changed in Missouri. Punitive damages may not be granted unless clear and convincing proof is shown. *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 111 (Mo. 1997). This standard applies to trials which begin after February 1, 1997. *Id.*

35. *Hoover's Dairy, Inc. v. Mid-American Dairymen, Inc.*, 700 S.W.2d 426, 435 (Mo. 1985).

36. *Stojkovic v. Weller*, 802 S.W.2d 152, 155 (Mo. 1991), *overruled by* *Rodriguez v. Suzuki Motor Corp.*, 936 S.W. 2d 104 (Mo. 1997).

37. *Hoover's Dairy*, 700 S.W.2d at 436.

38. *Angotti v. Celotex Corp.*, 812 S.W.2d 742, 746 (Mo. Ct. App. 1991).

39. MO. REV. STAT. § 510.263.2 (1994).

40. MO. REV. STAT. § 510.263.3 (1994).

41. *Moore v. Missouri-Nebraska Express, Inc.*, 892 S.W.2d 696, 713 (Mo. Ct. App. 1994).

42. 655 S.W.2d 114 (Mo. Ct. App. 1983).

43. *Id.* at 117.

could reasonably conclude that a smaller award of punitive damages would have little deterrent effect.”⁴⁴

In *Gollwitzer v. Theodoro*,⁴⁵ the plaintiff read the defendant’s gross sales and the value of the defendant’s inventory from the defendant’s tax returns into evidence.⁴⁶ The court noted that the defendant’s wealth and affluence can properly be considered, but found reversible error in the evidence presented by the plaintiff.⁴⁷ Gross sales alone were inadequate because they did not show that a profit was made, and standing alone, gross sales meant nothing.⁴⁸ The mere value of inventory may be misleading if some of it is mortgaged.⁴⁹ The court found the plaintiff’s use of such evidence to be prejudicial enough to warrant a new trial.⁵⁰

In *Biermann v. Gus Shaffar Ford, Inc.*,⁵¹ the defendant objected to the admission of his taxable income for the year.⁵² The court agreed that it is possible to have a high net income yet little net worth.⁵³ The court found no error, however, because the facts of that case indicated that defendant’s net worth was three times his taxable income for that year.⁵⁴

Missouri law regarding evidence of net worth does not require that such evidence be admitted, but if admitted, the evidence must provide an adequate description of the defendant’s net worth.

Missouri law provides that plaintiffs in wrongful death actions receive such damages which are “fair and just for the death and loss thus occasioned.”⁵⁵ Section 537.090 of the Missouri Revised Statutes also states that “mitigating or aggravating circumstances attending the death may be considered” in such actions.⁵⁶ The appropriate remedy for an excessive verdict varies according to the cause of the excessive verdict.⁵⁷ When the verdict “is simply disproportionate to the proof of injury and . . . results from an honest mistake by the jury in assessment of the evidence,” the appropriate remedy is remittitur.⁵⁸ When the verdict is excessive as a result of “trial misconduct and thus results

44. *Id.*

45. 675 S.W.2d 109 (Mo. Ct. App. 1984).

46. *Id.* at 111-12.

47. *Id.* at 112.

48. *Id.*

49. *Id.* The court noted that a large inventory may even show a lack of success in business. *Id.*

50. *Id.*

51. 805 S.W.2d 314 (Mo. Ct. App. 1991).

52. *Id.* at 323-24.

53. *Id.* at 324.

54. *Id.*

55. MO. REV. STAT. § 537.090 (1994).

56. MO. REV. STAT. § 537.090 (1994).

57. *Young v. Jack Boring’s, Inc.*, 540 S.W.2d 887, 897 (Mo. Ct. App. 1976).

58. *Id.*

from the bias and prejudice of the jury," the prejudice can only be remedied by a new trial.⁵⁹ A trial court's reduction of a jury award through remittitur is a ruling upon the weight of evidence and is reviewed for an abuse of discretion.⁶⁰ A trial court abuses its discretion when the remitted judgment is still excessive enough to shock the conscience of the appellate court.⁶¹

The doctrine of remittitur was abolished by the Missouri Supreme Court in its 1985 decision in *Firestone v. Crown Center Redevelopment Corp.*,⁶² only to be reinstated by the Missouri legislature in 1987.⁶³ Section 537.068 of the Missouri Revised Statutes provides that "[a] court may enter a remittitur order if, after reviewing the evidence in support of the jury's verdict, the court finds that the jury's verdict is excessive because the amount of the verdict exceeds fair and reasonable compensation for plaintiff's injuries and damages."⁶⁴

Punitive damage awards are limited by both Missouri's prohibition of excessive verdicts and the Due Process Clause of the Fourteenth Amendment.⁶⁵ Among the factors to be considered in determining the appropriateness of an award under Missouri law are the outrageousness of the defendant's conduct,⁶⁶ the defendant's standing or intelligence,⁶⁷ and the extent of the injuries suffered.⁶⁸

In *Pacific Mutual Life Insurance Co. v. Haslip*,⁶⁹ the United States Supreme Court visited the issue of punitive damages and their relationship to due process. In that case, the defendant argued that a punitive damage award which was four times the compensatory damage award violated due process.⁷⁰ Specifically, the defendant argued that the award was an arbitrary deprivation of property.⁷¹ The Supreme Court rejected a bright-line standard in favor of a reasonableness test for constitutionality.⁷² "As long as [jury and trial court] discretion is exercised within reasonable constraints, due process is satisfied."⁷³ A later Supreme Court

59. *Id.*

60. Bishop v. Cummines, 870 S.W.2d 922, 923 (Mo. Ct. App. 1994).

61. Larabee v. Washington, 793 S.W.2d 357, 360 (Mo. Ct. App. 1990), *overruled* by Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439 (Mo. 1998).

62. 693 S.W.2d 99, 110 (Mo. 1985).

63. MO. REV. STAT. § 537.068 (1994).

64. MO. REV. STAT. § 537.068 (1994).

65. Bennett v. Owens-Corning Fiberglass Corp., 896 S.W.2d 464, 465-66 (Mo. 1995).

66. St. Joseph Belt Ry. v. Shain, 108 S.W.2d 351, 355 (Mo. 1937).

67. Moore v. Missouri-Nebraska Express, Inc., 892 S.W.2d 696, 714 (Mo. Ct. App. 1994).

68. *Id.*

69. 499 U.S. 1, 18-19 (1991).

70. *Id.* at 7.

71. *Id.* at 16.

72. *Id.* at 19.

73. *Id.*

case held that punitive damage awards are also subject to procedural due process limitations.⁷⁴ A majority of the Supreme Court held that procedural due process requires meaningful and adequate judicial review of punitive damage awards.⁷⁵

The Supreme Court touched on punitive damages most recently in *BMW v. Gore*.⁷⁶ There, a purchaser of a new BMW automobile sued BMW upon learning that the car had undergone repairs prior to purchase.⁷⁷ BMW had not disclosed the repairs because of its nationwide policy whereby repairs were only disclosed to the purchaser when the cost of such repairs exceeded three percent of the purchase price.⁷⁸ The jury granted Gore four thousand dollars in compensatory damages and \$4 million in punitive damages.⁷⁹ The Alabama Supreme Court reduced the punitive award to \$2 million, finding that figure constitutionally permissible.⁸⁰

The United States Supreme Court held that a punitive damage award cannot be so “grossly excessive” when compared to the state objectives of punishment and deterrence as to enter the “zone of arbitrariness” which violates the Due Process Clause. Additionally, the Supreme Court gave lower courts three specific factors to consider when reviewing punitive damage awards for due process violations. The reviewing court must consider the degree of reprehensibility of the defendant’s actions, whether the punitive damages award bears a reasonable relationship to the harm that has occurred or that is likely to occur as a result of the defendant’s actions, and the difference between this award and civil or criminal penalties imposed in similar cases.⁸¹

IV. INSTANT DECISION

In *Barnett v. La Societe Anonyme Turbomeca France*,⁸² the Missouri Court of Appeals for the Western District held that Section 510.263.4 is inapplicable when no punitive damages have actually been paid, but previous judgments and judgments pending on appeal must be treated as mitigating circumstances in remitting juries’ and trial courts’ awards so as to not violate the Due Process Clause of the Fourteenth Amendment.⁸³ The court initially addressed the defendant’s argument that the defendant was wrongly denied the right to explain

74. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 420 (1994).

75. *Id.*

76. 116 S. Ct. 1589, 1595 (1996).

77. *Id.* at 1593.

78. *Id.*

79. *Id.* at 1593-94.

80. *BMW of North America, Inc. v. Gore*, 646 So. 2d 619, 621 (Ala. 1994), *rev’d*, 116 S. Ct. 1589 (1996).

81. *BMW*, 116 S. Ct. at 1598-99.

82. 963 S.W.2d 639 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

83. *Id.* at 667-69.

bifurcation to the jury.⁸⁴ The court then discussed the admissibility of net worth evidence.⁸⁵ Next, the court looked at the jury and trial court's verdict and judgment,⁸⁶ and finally, the court addressed the plaintiff's appeal regarding the statutory punitive damage credit.⁸⁷

In response to defendant's argument that the trial court erred by not permitting the defendant to explain the bifurcation process to the jury, the court analyzed Section 510.263.⁸⁸ The court observed that such a matter was within the discretion of the trial court⁸⁹ and would not be disturbed absent a finding of abuse of discretion.⁹⁰ The court stated that the better practice would have been to more fully instruct the jury as to the nature of the proceedings,⁹¹ but because the court was going to grant remittitur, it asserted that this did not constitute reversible error.⁹² The court went on to describe how the jury's determination of actual damages concurrent with the defendant's liability for punitive damages might inflate the amount of compensatory damages.⁹³ Pointing out that certain other jurisdictions allow only compensatory damage evidence in the first stage, the court left the matter for "legislative consideration."⁹⁴

Next, the court considered defendant's argument that only "net worth" evidence, and not evidence of gross yearly sales, is admissible during the punitive damage phase of the trial.⁹⁵ The court noted that the statute governing bifurcated trials⁹⁶ mentioned evidence of defendant's "financial condition," but also stated that evidence of defendant's "net worth" shall be admissible in the second phase of the trial.⁹⁷ Because past Missouri decisions mentioned the "financial condition"⁹⁸ and "financial status"⁹⁹ of the defendant in punitive damage cases, the court concluded that the language in Missouri's bifurcated

84. *Id.* at 653.

85. *Id.* at 654-55.

86. *Id.* at 655.

87. *Id.* at 667.

88. MO. REV. STAT. § 510.263 (1994).

89. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 654 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *See* MO. REV. STAT. § 510.263 (1994).

97. *See* MO. REV. STAT. § 510.263 (1994).

98. *Moore v. Missouri-Nebraska Express, Inc.*, 892 S.W.2d 696, 713 (Mo. Ct. App. 1994).

99. *Call v. Heard*, 925 S.W.2d 840, 849 (Mo. 1996), *cert. denied*, 117 S. Ct. 770

(1997).
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trial statute did not “make irrelevant and inadmissible any evidence of the defendant’s ‘financial status’ other than the net worth figure.”¹⁰⁰

The court then considered defendant’s assertion that the compensatory and punitive damage awards were excessive and warranted remittitur under Missouri law.¹⁰¹ Because there was no evidence of trial misconduct, the court found that a new trial was not warranted.¹⁰² To determine whether the compensatory damage award was excessive, the court considered several factors. The court observed that there was evidence of the decedent having experienced pain and suffering for three to five minutes prior to his death.¹⁰³ The court also considered the loss that decedent’s family suffered in terms of income, consortium, companionship, instruction, and comfort.¹⁰⁴ Also noteworthy was the fact that the decedent was survived by two children in their early teens.¹⁰⁵ Still, the court found \$25 million in compensatory damages excessive and ordered remittitur, finding that \$3.5 million was an appropriate compensatory damage award.¹⁰⁶

The defendant argued that the issue of punitive damages was not submissible to the jury, and if submissible, that the award of \$87.5 million dollars was excessive.¹⁰⁷ The court mentioned that punitive damages serve as an example and deter similar conduct in others.¹⁰⁸ Because the trial court heard evidence that the defendant corporation’s officers knew of the problem with the helicopter engines,¹⁰⁹ did not inform customers of the problem,¹¹⁰ and extended the number of flight hours between overhauls,¹¹¹ the plaintiffs made a submissible case for punitive damages.¹¹²

In determining whether remittitur of the punitive damage award was appropriate, the court observed that there was no “punctilious prescription”¹¹³ or bright-line test to determine excessiveness.¹¹⁴ No certainty could be found in such cases because each case “presents its own peculiar facts and circumstances

100. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 655 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

101. *Id.* at 656.

102. *Id.*

103. *Id.* at 658.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 659-61.

108. *Id.* at 659.

109. *Id.*

110. *Id.* at 660.

111. *Id.* at 661.

112. *Id.* Of particular import was the fact that the defendant viewed lengthening the amount of time between overhauls as a sales advantage. *Id.*

113. *See Hodges v. Johnson* 417 S.W.2d 685, 689 (Mo. Ct. App. 1967).

114. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 661 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

which must be evaluated.”¹¹⁵ The court observed that the jury had great latitude in this regard, but that discretion must be tempered by the Due Process Clause of the Fourteenth Amendment.¹¹⁶ The court looked to the three factors set out in *BMW v. Gore*¹¹⁷ to determine whether the award violated the defendant’s due process rights.¹¹⁸ Again, the court turned to the testimony of Turbomeca’s corporate and safety officers to determine the reprehensibility of the defendant’s conduct.¹¹⁹ The court found ample evidence of reprehensible conduct in the fact that Turbomeca did not report the incidents of engine failure to either the helicopter owners or the Federal Aviation Administration.¹²⁰ Also reprehensible was the fact that some incidents were reported to one customer, the French police, but not to other customers.¹²¹ The second indicium of an excessive punitive damage award mentioned in *Gore* is the ratio of punitive damages to actual damages.¹²² Here, if the trial court’s award of \$87.5 million were to stand, the relationship between the two figures would be over three to one.¹²³ Finally, *Gore* dictates that the punitive damage award be compared to civil or criminal penalties given in comparable cases.¹²⁴ Because Turbomeca’s decisions were solely based on economics and because Turbomeca had adequate notice of the severity of the punishment that might result from their conduct, the court concluded that punitive damages were the “only real way to deter the conduct” of Turbomeca.¹²⁵

The court then discussed Missouri’s requirement that an excessive punitive damage award be remitted.¹²⁶ Among the factors to be considered in this inquiry were the outrageousness of the defendant’s conduct, aggravating and mitigating circumstances, the defendant’s financial status, and the character of both parties.¹²⁷ Outrageous conduct was found in the fact that Turbomeca marketed its helicopters for emergency medical transport, where even experienced pilots could not be expected to maneuver and land a helicopter with engine trouble.¹²⁸ Just as reprehensible was Turbomeca’s lack of honesty and forthrightness with

115. *Id.*

116. *Id.* at 662.

117. 517 U.S. 559, 568 (1996).

118. *Barnett*, 963 S.W.2d at 662.

119. *Id.*

120. *Id.*

121. *Id.* at 663.

122. *Id.* at 666.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* See *Moore v. Missouri-Nebraska Express, Inc.*, 892 S.W.2d 696, 714 (Mo. Ct. App. 1994).

128. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 666 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).
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its customers.¹²⁹ Also, Turbomeca had not disclosed information to its customers since the accident that was the subject of this cause of action.¹³⁰ Because such objectionable conduct warranted punitive damages, but \$87.5 million was excessive under both Missouri law and due process considerations, the court remitted the punitive damage award to \$26.5 million.¹³¹

The court next considered the plaintiff's appeal regarding the statutory credit applied to the award received in the Letz action.¹³² The court stated that the statute governing the credit¹³³ did not envision the situation presented here: prior punitive damages had been awarded but not yet paid, and the prior case was up on appeal.¹³⁴ The court admitted that a strict construction of the statute would result in no credit being applied because there had been no amounts "previously paid" in the prior action.¹³⁵ The court hypothesized other problems that could arise in the implementation of the credit.¹³⁶ For example, the defendant may have no opportunity to apply for a credit in the first action because no damages would have been awarded yet, but would lose the right to such credit because it must be requested within thirty days of the entry of judgment.¹³⁷ Because a conditional credit or other exception carved into the statutory credit scheme might result in unnecessary confusion, the court held that total punitive damages where there are successive suits must not exceed due process limits.¹³⁸ This can be prevented if the trial court considers previous and pending judgments rendered against the defendant when considering whether to remit the damage award.¹³⁹

V. COMMENT

The Missouri Court of Appeals for the Western District, in its handling of the various issues presented in *Barnett v. La Societe Anonyme Turbomeca France*, followed existing Missouri precedent concerning the admissibility of net worth evidence and bifurcation of punitive damages trials. In an issue of first impression, it resolved the problems that arise when Section 537.090 is applied in contexts which the statute did not contemplate.

129. *Id.*

130. *Id.* at 667.

131. *Id.*

132. *See supra* notes 6-10 and accompanying text.

133. *See supra* notes 27-29 and accompanying text.

134. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 668 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 669.

By not finding reversible error in the trial court's disallowing the defendant to explain the bifurcation procedure to the jury,¹⁴⁰ the court failed to ensure that defendants will receive adequate procedural protections with respect to punitive damages. If Missouri is to use the bifurcated trial procedure for punitive damages, it should use it in an efficient manner. The jury should understand that while they are determining liability for punitive damages, they will not determine the appropriate amount of such damages until later in the trial. No countervailing interest can be served by restraining defense counsel in this way. There is no deception or prejudice which could result from the defendant explaining the process to the jury. Especially wide discretion should be given to defendants' counsel in products liability actions where the defendant, usually a large manufacturer, has so much to lose in both the compensatory and punitive damage stage. The court mentioned similar concerns for "legislative consideration,"¹⁴¹ but the legislature would not need to act if such trial court error were found to be reversible. The court stated that its remittitur would cure any prejudice, but there is still the possibility that the remitted award exceeds an award the jury might have granted had they been properly admonished regarding the compensatory and punitive damages stages of the trial. While this may not rise to the level of error which violates a defendant's procedural due process rights,¹⁴² it should nonetheless be a consideration in future cases.

The court held that the trial court did not err in admitting defendant's sales figures for the two prior years.¹⁴³ While the court was correct to point out that evidence other than net worth is often admissible, it reaches an erroneous conclusion to let in so much non-net worth evidence. When there is reliable evidence of the defendant's net worth, other evidence of defendant's financial condition should be irrelevant. Gross receipts and inventory are not indicative of net worth and should only be admissible when there is no direct evidence of net worth. Here, defendant disclosed its net worth, yet plaintiff was allowed to discuss sales figures for the past two years.¹⁴⁴

The court states that, on these facts, there was sufficient evidence for the jury to determine that their punitive damage award would deter this type of conduct.¹⁴⁵ That may be an improper way to frame the issue. Consider a case where a massive accident has left several potential plaintiffs. The jury in an early case may want to leave the defendant with some money in his coffers so future plaintiffs can recover also. In this sense, reliable evidence of net worth is needed to protect potential plaintiffs, as well as the defendant, in these actions.

140. See *supra* notes 87-93 and accompanying text.

141. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 654 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

142. See *supra* note 73 and accompanying text.

143. See *supra* notes 94-99 and accompanying text.

144. *Barnett*, 963 S.W.2d at 654-55.

145. *Id.* at 655.

Net worth evidence may sometimes be a plus for the defendant in the short-term and beneficial to future plaintiffs in the long term.

The court clearly enunciated the standards for remittitur under both Missouri law and the United States Constitution.¹⁴⁶ The court fails, however, to give any guidance to trial courts on how much of the judgment to remit. The court states that, for compensatory damages, \$25 million is excessive and \$3.5 million is more appropriate.¹⁴⁷ For punitives, \$87.5 million is excessive and \$26.5 million is more appropriate.¹⁴⁸ While no bright-line test can be announced with such a fact-based determination, an acceptable ratio could be announced. This ratio could be expressed in terms of the relationship between total compensatory damages and economic damages. Or it could be a ratio between punitive and compensatory damages. This would give the trial court a benchmark for damages, and hopefully prevent every large award from being appealed.

The court refused to carve an exception into Missouri's statutory punitive credit, only requiring that successive awards not exceed due process requirements. This rule will work to contravene the legislative intent evinced in Section 510.263. The purpose of the statute was not to overly deter defendants who had paid punitive damage judgments arising out of the same conduct. In short, duplicative judgments bear no relation to due process analysis.¹⁴⁹ The defendant may pay double awards for the same conduct, yet such awards may not enter the "zone of arbitrariness" which violates the Due Process Clause.¹⁵⁰ The result, therefore, will be to overly deter in cases that are brought close in time or are on appeal at the same time, despite legislative intent to protect defendants from multiple judgments.

VI. CONCLUSION

Barnett v. La Societe Anonyme Turbomeca France affects several areas of Missouri law on punitive damages. While the decision remains faithful to existing Missouri precedent, it leaves trial courts with little guidance on how the doctrine of remittitur should be utilized. In addition, the decision delineates the relationship between Missouri's statutory credit for previously paid punitive damages and the judicial power of remittitur.

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146. See *supra* notes 61-80 and accompanying text.

147. *Barnett v. La Societe Anonyme Turbomeca France*, 963 S.W.2d 639, 658 (Mo. Ct. App. 1997), *cert. denied*, 119 S. Ct. 75 (1998).

148. *Id.* at 667.

149. See *supra* notes 69-80 and accompanying text.

150. See *supra* notes 69-80 and accompanying text.

