

Apr 2022 | [Articles Blog: The Westchester Litigator](#)

The Use of Remittitur to Address a Jury's Excessive Punitive Damages Award

A jury's verdict at the conclusion of trial is considered by many to be the final word in a long, hard-fought litigation. Trial lawyers know, however, that this is not necessarily the case and that a motion for a new trial can serve as a powerful tool in the losing party's arsenal. As demonstrated in a recent case out of the Southern District of New York, defendants faced with an excessive jury verdict may also consider moving for remittitur, which asks the court to give the plaintiff a choice: accept a reduced damages award or face a new trial. Following a recent jury trial in an excessive force case filed by a prisoner against corrections officers, the defendant corrections officers filed a motion for a new trial or, alternatively, for remittitur, based on an argument that the jury's award of punitive damages was excessive. Judge Cathy Seibel ultimately agreed that the award was excessive and held that so long as the plaintiff agreed to accept a reduced punitive damages award, there would be no new trial.

The Case: *Magalios v. Peralta et al*

In *Magalios v. Peralta*, No. 19-CV-6188 (CS), 2022 WL 407403 (S.D.N.Y. Feb. 10, 2022), the plaintiff, a prisoner at Fishkill Correctional Facility, brought an action pursuant to 42 U.S.C. § 1983, alleging that he was the subject of excessive force when he was beaten without provocation by two of the defendant corrections officers and that three of the defendant corrections officers failed to intervene. The plaintiff argued that the defendants' actions violated the plaintiff's rights under the Eighth Amendment. The defendants denied the plaintiff's allegations in their entirety. After a four-day jury trial before Judge Seibel, the jury found the defendants jointly and severally liable for \$50,000 in compensatory damages, and imposed punitive damages of \$350,000, \$350,000, and \$250,000 on the three corrections officers who failed to intervene.

Following the verdict, the defendants filed a motion under Federal Rule of Civil Procedure 59 for a new trial or alternatively, for remittitur, arguing that the jury's punitive damages award was excessive. Judge Seibel recognized that Rule 59 leaves the decision of whether to grant a new trial to the district court's "sound discretion" but that such motion should only be granted where the jury's verdict is "egregious." Judge Seibel further explained that where a district court finds a jury's damages award to be excessive, the court may 1) order a new trial on all issues, 2) order a new trial on damages only, or 3) grant remittitur, which compels the plaintiff to choose between a new trial and a reduction of the damages award.

In determining whether the punitive damages award was excessive, the court considered the following "*Gore* factors" delineated by the United States Supreme Court in *BMW of North America, Inc. v. Gore* 517 U.S. 559 (1996): 1) "degree of reprehensibility" of the defendants' conduct; 2) the "disparity between the harm or potential harm and the punitive damages award"; and 3) the difference between the punitive damages award and "the civil and criminal penalties for comparable misconduct."

In applying the first *Gore* factor, Judge Seibel found that the trial evidence “amply supports a finding that Defendants’ conduct was reprehensible, violent, deceitful, and malicious.” Judge Siebel noted that this was “one of the strongest cases for excessive force [she has] seen in [her] years on the bench.” In rejecting the defendants’ argument that there was no evidence that they acted maliciously and wantonly, Judge Seibel admonished counsel, stating that “[c]ounsel’s obligation to advocate for their clients does not require them to bury their heads in the sand or to risk their own credibility.” The court found that the first *Gore* factor militated in favor of a substantial punitive damages award.

Next, the court considered the second *Gore* factor, which examines the “disparity between harm or potential harm and the punitive damage award.” Courts considering this factor often look to the ratio of the punitive damages award to the compensatory damages award as informative, although there is no bright-line rule for when a ratio is presumptively excessive. In this case, Judge Seibel found that the ratios of 7:1 and 5:1 in this case “appear to be high.”

The final *Gore* factor considers the difference between the award at issue and “the civil and criminal penalties for comparable misconduct.” Judge Seibel first noted that the maximum fine for a federal criminal civil rights violation is \$250,000 or twice the gross loss from the offense. The fact that the jury’s punitive damages award was equal to or exceeded \$250,000 led Judge Seibel to conclude that the “awards are somewhat excessive.” The court also surveyed comparable cases in the Second Circuit and noted the “the purpose of punitive damages” is to “punish the defendant and deter him and others for similar conduct in the future.” Accordingly, Judge Seibel found “[w]hile the jury’s award here is somewhat excessive . . . the reprehensible nature of the Defendants’ conduct, and the fact that similar acts often go undetected in correctional facilities, mandates a significant punitive damages award to deter the Defendants, and others like them, from engaging in similar acts in the future.” The court found remittitur of the punitive damages awards appropriate and denied the defendants’ motion for a new trial, conditioned on the plaintiff accepting reduced punitive damages awards in the amounts of \$200,000, \$200,000, and \$100,000. If the plaintiff did not accept, Judge Seibel indicated that she would grant the motion for a new trial on the issue of punitive damages only.

Finally, in an interesting discussion, Judge Seibel urged the state of New York not to voluntarily indemnify the individual defendants for the punitive damages award. The court warned that the state’s indemnification of the defendants would defeat the purposes of punitive damages, send a “terrible message” to corrections officers and may even lead to liability for the state. Judge Seibel offered that the jury was “plainly disgusted” by the defendants’ conduct and would be “equally disgusted” if the jury were to learn that New York taxpayers would satisfy the plaintiff’s judgment. Indeed, Judge Seibel could not “think of a more effective tool for future misconduct” than for the defendants to have their wages garnished or their savings lost.

Takeaway

Where the losing party seeks to challenge a jury’s damages award, remittitur is a powerful tool that can lead to a reduction in excessive jury awards without wasting substantial party and judicial resources on a new trial.