

# Illinois Attorneys Could Be Liable for Punitive Damages in Malpractice Claims

By John King on April 13, 2023  
Posted in Professional Liability

A recent decision from the Supreme Court of Illinois may have rippling consequences for practicing attorneys facing legal malpractice actions. In *Midwest Sanitary Serv., Inc. v. Sandberg, Phoenix & Von Gontard, P.C.*, 2022 IL 127327, the Illinois Supreme Court ruled that upon proof of causation, punitive damages in an underlying action are recoverable as compensatory damages in a legal malpractice action.

## Case Background

Plaintiffs Nancy Donovan, Bob Evans Sr., and Midwest Sanitary Service, Inc. filed a legal malpractice action in the circuit court of Madison County against their attorneys (Sandberg, Phoenix, & Von Gontard, P.C.). Plaintiffs sought reimbursement for punitive damages that Midwest paid as a result of Defendants' alleged professional negligence.

The circuit court denied a motion to dismiss based on the pleadings but did certify a question for immediate appeal to the appellate court pursuant to Illinois Supreme Court Rule 308. The certified question asked:

Does Illinois' public policy on punitive damages and/or the statutory prohibition on punitive damages found in 735 ILCS 5/2-1115 bar recovery of incurred punitive damages in a legal malpractice case where the client alleges that, but for the negligence of the attorney in the underlying case, the jury in the underlying case would have returned a verdict awarding either no punitive damages or punitive damages in a lesser sum?

## Appellate Rulings

The Appellate Court ruled that Midwest was not barred from recovering punitive damages it paid in the underlying case. Following a further grant of leave to appeal, the Supreme Court of Illinois upheld the appellate court's ruling.

The Defendant law firm certainly faced an uphill battle based on the facts of the underlying suit. The trial court had found that the law firm failed to disclose witnesses, forfeited arguments, and failed to identify evidence as lost or missing. Based on those findings, the trial court granted Plaintiff an Illinois Pattern 5.01 Instruction. (A Pattern 5.01 Instruction means the court tells the jury that specific pieces of evidence were not presented during the trial. The jury is then allowed to infer that the missing evidence would have been unfavorable to the party that failed to produce the evidence – in this case,

the Defendant law firm.) The appellate court upheld the trial court's actions.

In the *Midwest* appeal, the Illinois Supreme Court laid out the relevant malpractice analysis:

The plaintiff must prove that he suffered actual damages proximately caused by the attorney's malpractice. To establish proximate causation in a legal malpractice case, the plaintiff must prove a "case within a case," meaning the plaintiff must establish the underlying action and what the result would have been in that action absent the alleged negligence. *Merritt v. Hopkins Goldenberg, P.C.*, 362 Ill. App. 3d 902, 910, 299 Ill. Dec. 271, 841 N.E.2d 1003 (2005). In other words, the plaintiff must establish that, "but for" the attorney's negligence, the damages alleged would not have been incurred.

*Midwest Sanitary Serv., Inc. v. Sandberg, Phoenix & Von Gontard, P.C.*, 2022 IL 127327, ¶ 15

Illinois law currently bars punitive damages in legal malpractice cases. The law assumes that such awards would be illogical because the jury already awarded full compensation to the plaintiff for all the damages it actually sustained. However, the court recognized that in this case, punitive damages paid out in the underlying suit would be recovered as *compensatory* damages in the malpractice suit because Midwest alleged that it had to pay out the punitive damages as a proximate cause of the Defendants' alleged negligence. Additionally, such a ruling avoids common public policy issues contemplated in other cases that barred such recovery. (For example, in *Midwest*, the compensation sought in the malpractice claim was not speculative; the punitive damages amount from the underlying case was already known.)

In sum, the Illinois Supreme Court ruled:

In the case under review, if the attorneys were found to be negligent in their defense of Midwest and proximately caused Midwest to be unsuccessful in the underlying action and forced to pay punitive damages, they can be held responsible for the entirety of the damage award entered against Midwest. The award of punitive damages in the underlying action would no longer be punitive in the legal malpractice action because it would not punish the attorneys. It would instead become an element of compensatory damages because it would repay and make Midwest whole for the pecuniary loss it suffered as a result of the attorneys' alleged negligence.

*Midwest*, at ¶ 48.

## The Takeaway

Any practicing attorney should take note of this ruling and the reasoning employed by the Court in reaching its decision. This expansion of what can be ruled compensatory damages significantly raises the stakes of receiving an adverse outcome at trial.

**Tags:** Compensatory Damages, Legal Malpractice Claims, Punitive Damages