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Beyond the Proffer – What a Recent Florida Appellate Decision Teaches Companies About Defending Against Punitive Damages Claims

A recent Florida appellate decision reinforces an important principle for businesses facing litigation: allegations of gross negligence and punitive damages must be supported by evidence, not assumptions about what witnesses may have meant to say.

In *Estancia US Limited Partnership v. Aji-Dawkins*, Florida's Sixth District Court of Appeal reversed a trial court order permitting a plaintiff to add a punitive damages claim after determining that the evidentiary record did not support the factual assertions underlying the request. The court went a step further, emphasizing the importance of candor to the tribunal and referring the matter to the Florida Bar for investigation.

For businesses, however, the more significant takeaway is not the disciplinary referral. It is the court's focus on what the evidence actually showed regarding the company's knowledge, actions, and response to the alleged hazard.

The Case in Brief

The plaintiff sought to add a punitive damages claim arising from injuries allegedly sustained when a hotel railing gave way.

At the hearing on the request, plaintiff's counsel argued that the hotel's owner knew the railing was unsafe, had been warned about the danger, and knew of a prior similar incident. The trial court relied on those representations in granting leave to amend.

On appeal, Florida's Sixth District Court of Appeal reviewed the deposition testimony and found the record did not support those assertions. The court concluded that the record was insufficient to establish a reasonable basis for punitive damages and directed the trial court to vacate its order.

What Businesses Should Take Away

Punitive damages claims often turn on one question: Can the plaintiff show the company knew of a serious risk and consciously disregarded it?

While every case is different, companies can take several proactive steps to strengthen their defenses and reduce the likelihood that ordinary negligence allegations will be reframed as gross negligence.

1. Create a Record of Decision-Making

When addressing operational, safety, compliance, or maintenance issues, document:

- The issue presented
- The information reviewed
- The individuals who participated in the decision
- The actions taken to address the concern

Years later, a contemporaneous record may provide the strongest evidence of reasonable conduct.

2. Establish Clear Reporting Procedures

Companies should maintain clear channels for employees to report:

- Safety concerns
- Equipment failures
- Operational risks
- Customer or visitor incidents

Equally important, management should document how reported concerns were investigated and addressed.

3. Preserve Evidence of Good-Faith Efforts

Inspections, testing, maintenance, training, audits, and corrective actions may all become important evidence in litigation.

The ability to demonstrate that the company actively evaluated and addressed potential risks can help counter allegations of conscious disregard.

This evidence may include manufacturer specifications, product packaging, and applicable code or safety certifications for the equipment and materials the company relies on. Documented reliance on manufacturer representations and independent certifications (along with proof of any inspection or testing performed) can show that the company acted reasonably rather than with conscious disregard. When outside contractors perform work, companies should require and retain the same compliance documentation and confirm that appropriate indemnification provisions are in place.

4. Treat Prior Incidents Seriously

Plaintiffs seeking punitive damages frequently focus on prior incidents, complaints, or warnings.

Companies should investigate reported issues, document findings, and record any corrective measures taken. A documented response often becomes a key component of the defense.

5. Prepare Early When an Incident Occurs

Following a significant incident, organizations should work with counsel to:

- Preserve relevant records
- Identify key witnesses
- Gather internal reports and communications
- Evaluate potential areas of exposure

Early preparation can help ensure that the factual record remains accurate and complete.

6. Apply the Same Standards to Temporary Repairs

Temporary repairs (including repairs made after a storm or other disruption) deserve the same review, approval, and documentation as permanent ones. Stopgap measures installed under time pressure can later become the focus of a punitive damages claim. Companies should apply their normal standards to temporary repairs and record both the reasons for using them and any plan for a permanent correction.

Bottom Line

The *Estancia* decision serves as a reminder that punitive damages claims rise or fall on evidence demonstrating what a company knew, what it did, and whether its conduct reflects a conscious disregard of known risks.

Companies that consistently document decisions, investigate concerns, and maintain clear records of their risk-management efforts are often in the strongest position to defend against allegations of gross negligence and punitive damages.

Because punitive damages are frequently uninsurable, these protective measures and practices can be among the most valuable steps a company takes in managing its risk.

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