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Availability of Punitive Damages in NYCAL Cases In Limbo

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New York's Appellate Division, First Department, issued its decision yesterday on the New York City Asbestos Litigation (NYCAL) punitive damages/Case Management Order (CMO) issue. While the Appellate Court held that Judge Heitler had the authority to modify the CMO to lift the deferral on punitive damages, it also found that she exceeded that authority to the extent that the order directs applications for a jury charge on punitive damages to be made at the conclusion of the evidentiary phase of trial. As a result, the long-term viability of punitive damages in NYCAL cases is back in question.

The Appellate Court found that the new procedure violates due process in that defendants must be given an opportunity to conduct discovery and prepare a defense with respect a punitive damages claim. The Appellate Court stated that Judge Heitler's Order "deprives defendants of their rights to due process by leaving them guessing, until the close of evidence at trial, whether or not punitive damages will be sought."

The decision stays the implementation of the Judge Heitler's Order such that plaintiffs cannot seek punitive damages until such procedural protocols are determined.

The Appellate Court modified Judge Heitler's Order and remanded the matter to Judge Moulton to determine procedural protocols by which plaintiffs may apply for permission to charge the jury on punitive damages. The decision stays the implementation of the Judge Heitler's Order such that plaintiffs cannot seek punitive damages until such procedural protocols are determined. Notably, the Court further stated that "this decision does not preclude [Judge Moulton], after consultation with the parties, from reconsidering other aspects of the April Order, including the determination whether to permit claims for punitive damages under the CMO, in the exercise of the court's discretion, either upon application or at its own instance."

The Appellate Court's opinion can be found [here](#).

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