TXO Production Corp. v. Alliance Resources Corp.
No. 20281

McHugh, Chief Justice, concurring:

Although I concur with much of the majority's analysis in the present case, I disagree with the majority's categorization of defendants against whom punitive damages have been awarded. The majority opinion categorizes these defendants as either "really mean" or "really stupid." In its cavalier attempt to be clever and amusing, the majority opinion has carelessly ignored the fundamental factors which have traditionally been used by courts to characterize the conduct of defendants in assessing punitive damages.

Punitive damages have historically been part of our state tort law. As the law has developed in this area, certain terms have been established to characterize the degree of reprehensibility of the defendant's conduct.

Our traditional rule summarizing the type of conduct that will give rise to punitive damages is found in syllabus point 1 of Goodwin v. Thomas, 184 W. Va. 611, 403 S.E.2d 13 (1991):

> '"In actions of tort, where gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others appear, or where legislative enactment authorizes, it, the jury may assess exemplary, punitive, or vindictive damages. . . ." Syllabus point 4, in part, Mayer v. Frobe, 40 W.Va. 246, 22 S.E. 58 (1895).' Syllabus point 1, Wells v. Smith, 171 W. Va. 97, 297 S.E.2d 872 (1982).

Not surprisingly, none of the courts in the punitive damages cases cited by the majority use the terms "really stupid" or "really mean" when describing the defendant's actions in their review of the punitive damage awards. Instead, when characterizing the defendant's conduct, those courts use terms such as "conscious indifference," Glassock v. Armstrong Cork Co., 946 F.2d 1085, 1093 (5th Cir. 1991), reh'g denied, 951 F.2d 347, cert. denied, Celotex Corp. v. Glasscock, 112 S. Ct. 1778, 118 L. Ed. 2d 435 (1992); "reckless, willful and wanton," Defender Industries, Inc. v. Northwestern Mutual Life Ins. Co., 938 F.2d 502, 505 (4th Cir. 1991); "particularly egregious," Eichenseer v. Reserve Life Ins. Co., 934 F.2d 1377, 1382 (5th Cir. 1991); and "reprehensible," Hospital Authority of Gwinnett County v. Jones, 409 S.E.2d 501, 502 (Ga. 1991), cert. denied, ___ U.S. ___, 112 S. Ct. 1175, 117 L. Ed. 2d 420 (1992) and Gamble v. Stevenson, 406 S.E.2d 350, 355 (S.C. 1991).

These terms are well-founded in our tort law, and I can see no useful purpose whatsoever in abandoning these terms for the ridiculous categorization proposed by the majority in its opinion today. The terms noted above are those upon which attorneys and judges have traditionally relied in assessing punitive damages awards. Unfortunately, by suggesting the use of such subjective and nontechnical terms as "really stupid" and "really mean," the majority has offered no practical guidance to attorneys or judges in analyzing punitive damages cases.

I am authorized to state that Justice Miller joins me in this concurring opinion.