ORIGINAL

No. 2011-1120

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 10-094908

RONALD LURI,
Appellant/Cross-Appellee,

v.

REPUBLIC SERVICES, INC., et al.,
Appellees/Cross-Appellants.

REPLY BRIEF OF APPELLANT/CROSS-APPELLEE RONALD LURI

ROBIN G. WEAVER (0020673)
STEPHEN P. ANWAY (0075105)
SQUIRE, SANDERS & DEMPSEY, L.L.P.
4900 Key Tower
127 Public Square
Cleveland, OH 44114
Tel: (216) 479-8500
Fax: (216) 479-8780
E-mail: rweaver@ssd.com
sanway@ssd.com

Attorneys for Appellees/Cross-Appellants Republic Services, Inc.; Republic Services of Ohio Hauling, LLC; Republic Services of Ohio I, LLC, Jim Bowen, and Ron Krall

IRENE C. KEYSE-WALKER (0013143)
(COUNSEL OF RECORD)
BENJAMIN C. SASSÉ (0072856)
TUCKER ELLIS & WEST LLP
1150 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1475
Tel: (216) 592-5000
Fax: (216) 592-5009
E-mail: ikeyse-walker@tuckerellis.com
bsasse@tuckerellis.com

Attorney for Appellant/Cross-Appellee Ronald Luri

SHANNON J. POLK (0072891)
RICHARD C. HABER (0046788)
HABER POLK KABAT, LLP
737 Bolivar Road, Suite 4400
Cleveland, OH 44115
Tel: (216) 241-0700
Fax: (216) 241-0739
E-mail: spolk@haberpolk.com
rhaber@haberpolk.com

MICHELLE PIERCE STRONCZER (0066531)
PIERCE STRONCZER LAW, LLC
8931 Brecksville Rd.
P.O. Box 470606
Cleveland, OH 44147-0606
Tel: (440) 262-3636
E-mail: shelley.stronczer@piercelegal.com

Additional Counsel for Appellant/Cross-Appellee Ronald Luri

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I. INTRODUCTION

This Court requested briefing on a single, straightforward question: How is Ohio's punitive damage "cap" applied in a case in which a jury found that more than one corporate defendant acted with actual malice and returned individualized punitive damage awards? In her partial dissent below, Judge Kilbane concluded that under the plain and unambiguous language of R.C. 2315.21(D)(2)(a), each of the three corporate punitive damage awards in this case is capped at $7 million (two times the compensatory damages awarded to the Plaintiff from that Defendant). The majority opinion created an exception to the plain and unambiguous statutory language for cases in which legal doctrines "impute" the wrongdoing of one defendant to another for purposes of a joint and several award of compensatory damages.

In his Opening Brief, Plaintiff-Appellant Luri pointed out: (1) R.C. 2315.21(D)(2)(a) is plain and unambiguous and contains no exceptions; (2) even if courts could deviate from that plain and unambiguous language, the majority's exception mixes apples and oranges conceptually; and (3) the proposed exception is antithetical to the fundamental principle that punitive damages are designed to punish and deter a specific defendant's malicious misconduct.

In their Opposing Brief ("Opp. Br."), Defendants-Appellees Republic Services, Inc. ("Republic"), Republic Services of Ohio I, LLC ("Republic Ohio"), and Republic Services of Ohio Hauling, LLC ("Ohio Hauling") (collectively "Defendants") propose a rule of law that is tailored for a case-specific result, rewriting the facts and proceedings

below in the process. Although they never claim that R.C. 2315.21(D)(2)(a) is ambiguous (much less explain *how* it is ambiguous), Defendants rely on principles of statutory construction that only apply to ambiguous statutes. (*See* Opp. Br., pp. 18-25.) Rather than explain why joint liability for compensatory damages somehow trumps the plain and unambiguous language of the punitive damages cap, Defendants argue that Luri is "judicially estopped" from arguing that if it applies at all, the cap should apply in accordance with its plain and unambiguous language. (*Id.*, pp. 11-18.) Finally, in what has become a revealing trend (*see Luri I*, attached to Luri's Opening Brief, at Appx. 36, 37, and 40), Defendants continue their efforts to delay the consequences of their unlawful and malicious misconduct by asking this Court to "remand" for further appellate proceedings of a holding this Court declined to review. (*Id.*, pp. 25-28.)

It is respectfully submitted that Defendants focus on everything but the plain language of R.C. 2315.21(D) for a single reason – Judge Kilbane's partial dissent contains the correct calculation of the punitive damage cap.

II. FACTUAL AND PROCEDURAL REBUTTAL

Defendants did not contest the jury findings of retaliation or malice on appeal, but continue to ignore and mischaracterize the evidence and proceedings supporting those findings. The facts of this case do *not* "establish that this was a close case on liability and that a valid basis existed for terminating Luri's employment" (Opp. Br., p. 1). To the contrary, the evidence proved that Defendants *told* Luri he was being fired for refusing to

terminate one of his oldest employees, and that the allegedly "valid basis" for Luri's termination was created out of whole cloth after Luri objected to age discrimination.

A. The "Actual" Facts, as Found by the Jury.

The "actual facts" that Defendants offer to "tell a very different story" (Opp. Br., p. 6), consist of defense witnesses presenting hopelessly conflicting stories, under oath, about a paper trail manufactured to cover up retaliation. For example, while Defendants claim that "[i]n point of fact, Bowen never directed Luri to fire *anyone*" (Opp. Br., p. 6), Bowen himself said otherwise – Bowen told Luri, in the presence of Krall, that he was being terminated because "plus you didn't fire Frank Pascuzzi." (Tr. 624, Supp. 66.) While Defendants assert that Luri "never reported this 'discrimination' to anyone" (Opp. Br., p. 7), General Manager Gutwein testified that Luri came to him to express his concerns about Bowen's directive to fire his three oldest workers shortly after the incident occurred. (Tr. 739-41, Supp. 73.) And while Defendants continue to "blame the victim," claiming that Luri was a "poor" performer and one of the "worst" General Managers (Opp. Br., p. 2),[1] the jury was presented with overwhelming evidence that from 1998 to 2007, Luri received only positive performance reviews, and the three Cleveland

[1] The "rankings" referenced by Defendants were Vice President Krall's *internal* documents (purportedly kept to create a "succession plan") (Tr. at 1244; Reply Supplement ("Reply Supp.") at 2); the basis of Defendants' claim that "employees" believed Marino, not Luri, was their General Manager (Opp. Br., p. 3) was *one* comment by *one* employee, who was embarrassed by his mistake (Tr. 1123-24, Supp. 85); the "ghost" and "absentee manager" criticisms are from the fabricated "negative perceptions" paragraphs that Bowen added to a previously written memo and backdated after Luri filed this action. (Pl. Exhs. 35, 37, Supp. 112-113.)

Division facilities were on track for their best financial performance ever when Luri was terminated. (Tr. 566-70, 591, 745-49, 889-93, Supp. 51-52, 58, 74-75, 79-80.)

Similarly, the fabrication of evidence in this case went far beyond Bowen's decision to "add[] additional material to a memorandum he had previously written" (Opp. Br., p. 5). First, Bowen also *backdated* the altered memo to create the appearance that he had discussed performance issues with Luri *before* Luri refused to fire Pascuzzi. Second, in addition to the alteration and backdating revealed by computer forensics, Krall, Bowen, and Marino made up results of a spurious "survey" and non-existent "plant visit," and orchestrated the creation of "notes" allegedly documenting unfavorable comments and false allegations. (*See* Luri's Opening Br., pp. 5-6, 17-18 and transcript and exhibits cited therein.)

B. <u>The Relevant Procedural Aspects of the Case.</u>

In addition to "facts" rejected by the jury, Defendants attempt to "backdoor" improper arguments through an incorrect rendition of the procedural aspects of the case. (Opp. Br., pp. 7-9.) The "Due Process" assignment of error that Defendants asserted below is neither "germane to this appeal" nor appropriate for a "remand." The Court of Appeals disposed of that assigned error when it concluded that the reprehensibility of Defendants' conduct "speaks to an award of punitive damages in the full amount authorized by the legislature" (App. Op., ¶38), and this Court declined to hear Defendants' appeal from that finding.

Further, Defendants' characterization of their cross-appeal – "[i]f this Court upholds the constitutionality of the bifurcation statute in *Havel*, then a new trial is mandatory in this case" (Opp. Br., p. 9) – is simply untrue.[2] Even if this Court were to reverse the finding of facial unconstitutionality in *Havel*, it would most likely do so on the grounds that the bifurcation statute's constitutionality does not come into question so long as the statute is construed in a manner that is consistent with trial courts' discretion to govern proceedings in which issues of liability and malice are inextricably entwined (as here, where the fabrication of evidence is at the heart of both the Defendants' liability defense and the question of malice). Even if *Havel* were to result in a broader construction of the bifurcation statute, such a construction would not dictate the result in this case, where: (1) Defendants *asked* the Trial Court to construe the statute and Civ. R. 42(B) "in conjunction"; (2) the constitutionality of the statute was not raised by either party at the trial or appellate levels; (3) unlike the defendant in *Havel*, Defendants elected to go to trial rather than appeal the Trial Court's denial of their motion; and (4) Defendants can claim no prejudice from the denial of bifurcation in a case in which the jury necessarily had to hear about the fabrication of evidence as part of liability, where there is no challenge to the sufficiency of the evidence of malice, and where any

[2] Defendants' suggestion that this appeal is nothing more than an appendage to *Havel's* "procedural schedule" (Opp. Br., p. 9) merely confirms the corporate culture of denial that led to the substantial punitive damage awards in this case.

excessiveness in the punitive damage awards was cured by the application of a cap that provides the "fair notice" required by Due Process.

C. The Trial.

Finally, Defendants' argument section distorts the proceedings below in an effort to make it appear that a lone jury charge – the "single employer" instruction – dominated a lengthy trial comprised of seven volumes of transcript and hundreds of exhibits. The idea, for example, that Luri engaged in a trial strategy to manipulate the single employer doctrine into multiple punitive damage "caps" (Opp. Br., pp. 11-18) is, frankly, ludicrous. Not even Defendants believed that damage caps had any application to this statutory employment claim until after the jury returned its verdict, which is why their experienced employment counsel never requested economic damage "cap" instructions or interrogatories.

The claim that Defendants curtailed their presentation of evidence because they anticipated that the single employer doctrine would create an exception to multiple punitive damage caps (*see* Opp. Br., p. 20: "there was no evidence of Republic Ohio's net worth or number of employees put in at trial because the three corporate entities are treated as one by the cap statute") is even more bizarre. The parties and court simply

assumed (and properly so[3]) that tort reform damage caps do not apply *at all* to statutory actions.

Defendants also distort the "single employer" instruction itself. The quote on pages 15 and 16 of their Opposing Brief (which includes the opening description of the parties' claims) omits the critical paragraph immediately preceding the quoted language:

> Each Defendant is entitled to a fair and separate consideration of its or his own defense, and is not to be affected by your decision with respect to the others. The instructions apply to each Defendant unless otherwise indicated.

(*See* Opp. Supp. at 160.) Similarly, Defendants' one-paragraph excerpt from Luri's counsel's closing argument (Opp. Br., p. 15) fails to mention the context – counsel was arguing Defendants' liability for *compensatory* damages. When arguing punitive damages, and consistent with instructions that told the jury to consider each Defendant separately, Luri's counsel separately identified the malicious acts attributable to officers and managers of each of the three corporate defendants (Tr. 1604-08, Reply Supp. at 4-5), and the jury received separate interrogatories and verdict forms for the determination of each Defendant's malice and appropriate punitive award (Supp. 2-6, 11-14).

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[3] *See, e.g., Kramer Consulting, Inc. v. McCarthy*, S.D.Ohio No. C2-02-116, 2006 WL 581244, at *8 (Mar. 8, 2006) (statutory causes of action are not subject to the general punitive damages cap in R.C. 2315.21; because the General Assembly "knows how to apply a limit to the amount of punitive damages available under a statutory claim, if the statute does not explicitly specify such a limit, one should not be applied"). None of the cases Defendants cite (Opp. Br., p. 11, fn. 2) considers the application of damage caps to statutory causes of action.

III. ARGUMENT

R.C. 2315.21(D)(2)(a) provides in full: "The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff *from that defendant, as determined pursuant to division (B)(2) or (3) of this section.*" (Emphasis added.) The modifier "from that defendant" follows "compensatory damages awarded to the plaintiff," and plainly instructs courts to apply the cap separately to each defendant. The cross-referenced provision requiring "answers to an interrogatory that *specifies the total compensatory damages recoverable by the plaintiff from each defendant*" further supports this interpretation. R.C. 2315.21(B)(2) (emphasis added). The clear import of a focus on damages "awarded * * * from that defendant," as determined by interrogatories specifying damages "recoverable * * * from each defendant," is that the cap applies separately to each defendant. Since the entire $3.5 million compensatory damage award in this case is "recoverable * * * from each defendant," the plain language of R.C. 2315.21(D)(2)(a) entitles Luri to a judgment of $7 million in punitive damages against Republic, $7 million against Republic Ohio, and $7 million against Ohio Hauling.

Defendants do not dispute this plain meaning; they argue that it is somehow "unfair" or contrary to legislative intent when it results in each corporate Defendant being responsible for the reprehensible misconduct of its own officers and senior management. But the enforcement of plain and unambiguous language can never be contrary to legislative intent. Further, statutory enforcement here is wholly consistent with the

General Assembly's codification, as part of the punitive damage cap statute, of the fundamental common law principle that punitive damage awards are individualized to punish and deter individual misconduct.

A. Luri is Not "Estopped" from Seeking the Full Amount of Punitive Damages Authorized by the Cap.

Defendants now argue, for the first time, that Luri is "judicially estopped" from seeking application of the plain and unambiguous language of R.C. 2315.21(D)(2)(a). Even if preserved (and it is not[4]), Defendants' argument is wholly without merit.

Judicial estoppel applies when "a party shows that his opponent: (1) took a contrary position; (2) under oath in a prior proceeding; and (3) the prior position was accepted by the court." *Greer-Burger v. Temesi*, 116 Ohio St.3d 324, 2007-Ohio-6442, at ¶25, quoting *Griffith v. Wal-Mart Stores, Inc.*, 135 F.3d 376, 380 (6th Cir.1998). Because allegedly inconsistent positions must be taken in a "prior proceeding," Defendants' argument fails on its face.

But Defendants are also incorrect in their assertion that Luri took contrary positions in this case. It is Defendants who have flip-flopped on the question of whether they are jointly liable for punitive damages. Upon hearing that the Trial Court intended to submit an interrogatory asking the jury to state a single, "joint" amount of punitive damages to be awarded against "any of the Defendants," Defendants objected and the

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[4] It is axiomatic that arguments may not be raised for the first time on appeal. *State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St.3d 78, 81 (1997).

Trial Court agreed to their request for separate findings of malice and punitive damage awards for each of the five Defendants. (Tr. 1559-61, Supp. 101-02.) In contrast to that "apples to apples" change of position, there is nothing inconsistent between Luri's arguments that the "single employer" doctrine permits a joint and several *compensatory* award, and that R.C. 2315.21(D)(2)(a) codifies the individualized nature of *punitive* damages. The single employer doctrine permits an award of joint and several compensatory damages under an "integrated enterprise," "direct participation," or similar theory. *See, e.g., Esmark, Inc. v. National Labor Relations Board,* 887 F.2d 739, 753-756 (7th Cir.1989). The critical point is not how the jury gets there, but that joint and several liability under the single employer doctrine *is limited to compensatory damages.* While compensatory damages may be joint and several, punitive damages may not. *See, e.g., Mauk v. Brundage*, 68 Ohio St. 89 (1903), paragraph four of the syllabus ("If, in such case, the evidence warranted a finding that * * * some of the defendants were actuated by express malice and others were not, and the jury should so find, it is proper practice to render a verdict against all of the defendants for compensatory damages, and an additional amount as exemplary damages against those found to have been guilty of express malice.")

That distinction is based on the different purposes of the two damages; while compensatory damages are awarded to make the plaintiff whole, punitive damages are awarded to punish and deter anti-social conduct. Those purposes cannot be achieved through "joint" liability for punitive damages because: (1) "in order to be fair and

effective," punitive damages "must relate to the degree of culpability exhibited by a particular defendant and that party's ability to pay" (*Embrey v. Holly*, 442 A.2d 966, 973 (Md.1982)); and (2) joint liability could permit some defendants who engaged in malicious misconduct to escape punishment:

> The effect of joint liability in a tort context is to excuse one defendant from paying any portion of the judgment if the plaintiff collects the full amount from the other. While this possibility is not necessarily undesirable with respect to a judgment awarding compensatory damages, it is contrary to the policies underlying an award of punitive damages.

Loughman v. Consol-Pennsylvania Coal Co., 6 F.3d 88, 100 fn. 6 (3d Cir.1993), quoting *Smith v. Lightning Bolt Prods., Inc.*, 861 F.2d 363, 374 (2d Cir.1988).

Equally flawed, both legally and factually, are Defendants' assertions (Opp. Br., pp. 17-18) that Luri "took advantage" of the "single-employer concept" to establish punitive damages, and that it is "highly probable" that the jury "imputed" Bowen's malice to other Defendants. The arguments are legally unavailable because Defendants did not challenge the jury's malice findings below and those findings are not before this Court. Moreover, even if available to Defendants, their arguments are contradicted by the record. The evidence of malicious misconduct that Defendants are determined to ignore is summarized in the trial and two appellate decisions in the Appendix to Luri's Opening Brief, and at pages 5-6 and 17-18 of Luri's Opening Brief. Consistent with that evidence, Luri's closing argument described the separate acts of fabricating evidence and false testimony by managerial employees of *each* corporate defendant that supported

punitive damages.[5] *See, e.g.*, Tr. 1607-08 (discussing false testimony and fabrication by Krall (Republic), Bowen (Republic Ohio), and Marino (Ohio Hauling); Reply Supp. at 3-5.

B. The General Assembly's Intent Resides in the Clear and Unambiguous Language of R.C. 2315.21(D)(2)(a).

Defendants next rely on unsupported assumptions about legislative intent and alleged absurdities in the cap's application in an attempt to support a joint and several liability exception to the cap (Opp. Br., pp. 18-25). These arguments fail at the threshold, since Defendants do not identify any ambiguity in R.C. 2315.21(D)(2)(a). *See, e.g. WCI, Inc. v. Ohio Liquor Control Comm.*, 116 Ohio St.3d 547, 2008-Ohio-88, at ¶11; *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St.3d 234, 2009-Ohio-2610, at ¶36 (both holding that when a statute is unambiguous, this Court's task is to apply the law as written).

If the General Assembly had wished to *aggregate* and cap punitive damages, it could easily have done so by limiting the punitive damages in any "case" to two times the compensatory damage award. *See, e.g.*, Va. Code Ann. 8.01-3801, providing, in relevant part, that "[i]n no event shall the total amount of punitive damages exceed $350,000." It did not do so. Had the General Assembly intended (as Defendants appear to propose in

[5] Defendants' criticism of the references by Luri's counsel during closing argument to the consolidated net worth of the corporate defendants ignores the fact that Defendants *refused to produce* information sufficient to separately calculate the net worth of each defendant.

their proposition of law) to carve out a case-specific, employment-actions-in-which-plaintiffs-invoke-the-"single-employer"-doctrine-to-obtain-a-joint-and-several-compensatory-award-against-multiple-corporate-defendants exception, that exception would have been easy to craft and include. It did not do so.

Nor do Defendants' alleged "absurdities" support the joint and several liability exception created by the Eighth District at their behest. First, Defendants argue (Opp. Br., pp. 19-20) that such an exception would address the General Assembly's concern with "multiple awards of punitive or exemplary damages that have no rational connection to the wrongful actions or omissions of the tortfeasor." Am.Sub.S.B. No. 80 §3(A)(4)(b)(ii). But the General Assembly focused its concern on "multiple awards" against a *single* tortfeasor ("the" tortfeasor), not separate awards against *multiple* tortfeasors arising out of independent malicious acts. *See* R.C. 2315.21(D)(5)(a) (emphasis supplied) ("punitive damages shall not be awarded against *a* defendant if *that* defendant files with the court a certified judgment * * *.").

Second, Defendants argue (Opp. Br., pp. 19-21) that the absence of a joint and several liability exception "frustrates" the definition of "employer" in R.C. 2315.21(A)(4). But Defendants' argument assumes that "employer" includes parents, subsidiaries, affiliates, divisions, ***and*** departments – i.e., all such separate corporate forms must be considered "as a whole" for the purpose of applying caps. (Opp. Br., p. 19.) The statute uses the conjunctive "or," not "and." *See* R.C. 2315.21(A)(4) ("'Employer'" includes, but is not limited to, a parent, subsidiary, affiliate, division, ***or*** department of the

employer") (emphasis added). Thus, the definition merely specifies the myriad of corporate forms an employer may take; it has nothing to do with how the cap applies to separate punitive damage awards against distinct corporate entities, and certainly does not mandate aggregation of those awards.

The presence of statutory protections for "small employers" who timely invoke them[6] confirms the fairness of applying the cap separately to each defendant. By distinguishing between large employers and small employers (or individuals), the cap assures that its application reflects the common law teaching that punitive damage awards not go beyond what is necessary to achieve the "twin aims of punishment and deterrence as to *that defendant.*" *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 102 (2002) (emphasis added).

Third, applying the punitive damages cap as written will not produce absurd results. (Opp. Br., p. 21.) It is not "happenstance" that the jury awarded punitive damages against each corporate defendant. Rather, malicious conduct by managerial employees of *each* corporation led to the awards. (*See* Interrogatory Nos. 5-6, Supp. 12-14; Verdict Forms, Supp. 2-4.) There is nothing absurd about requiring each corporate defendant to pay a separate punitive damage award when a jury finds by clear and convincing evidence that each acted with actual malice.

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[6] Defendants raise yet another waived and factually unsupported argument at page 20 – that Republic Ohio is allegedly a "small employer."

Nor will application of the cap as written "create absurd and undesirable incentives." (Opp. Br., p. 22.) Defendants appear to assume that Republic will pay any punitive damage award entered against each corporate defendant, but cite no authority that would permit Republic to do so. *Cf. Neal-Pettit v. Lahman,* 125 Ohio St.3d 327, 2010-Ohio-1829, at ¶¶21, 23 (public policy bars indemnification for punitive damages). Additionally, their parade of horribles – including an alleged reluctance to create separate subsidiaries – overlooks the fact that multiple punitive damage awards require separate findings of malicious conduct supporting each award. Corporations will not refrain from creating additional subsidiaries out of a concern that the officers and management of each will engage in malicious conduct.

Finally, the hypotheticals advanced by Defendants (Opp. Br., pp. 23-24) do not reveal any "unpredictability" in the punitive damages cap as written. They merely illustrate the principle that, with respect to each defendant, the application of the cap turns on the total amount of harm caused by *that defendant*. This focus on the harm caused by a defendant – as opposed to the total award to the plaintiff – is both predictable and consistent with the principle that "a punitive damages award is more about defendant's behavior than plaintiff's loss." *Dardinger*, 98 Ohio St.3d at 102, quoting *Wightman v. Consolidated Rail Corp.*, 86 Ohio St.3d 431, 439 (1999).

C. Defendants' Request for "More" Appellate Proceedings Is Without Merit.

Defendants' last argument (Opp. Br., pp. 25-28) is that this Court's application of the clear and unambiguous language of R.C. 2315.21(D)(2)(a) would require a "remand" to allow Defendants' a *third* attempt at pursuing unmeritorious, previously rejected[7] arguments. The Eighth District resolved Defendants' Due Process assignment of error by holding that their reprehensible conduct "speaks to an award of punitive damages in the full amount authorized by the legislature" (App. Op., ¶38). Defendants cannot (and do not) claim that they lacked "fair notice"[8] that their individual acts of retaliation, cover-up, alteration of documents, and fabrication of documents and testimony could result in the penalties authorized under Ohio's punitive damage cap. Defendants can point to no

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[7] The Court of Appeals has already rejected the argument (Opp. Br., pp. 26-27) that punitive damages should be aggregated for purposes of calculating "ratios." And for good reason. Due Process rights are personal, not collective. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) ("The Due Process Clause * * * prohibits the imposition of grossly excessive or arbitrary punishments *on a tortfeasor*."). Because Due Process rights are personal, the weight of authority holds that aggregating punitive damage awards in a "ratio" impermissibly "shifts the focus away from a particular defendant's conduct to the defendants' conduct *en grosse*." *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life*, 422 F.3d 949, 960 (9th Cir.2005); *see, also, Merrick v. Paul Revere Life Ins. Co.*, 594 F.Supp.2d 1168, 1190 (D.Nev.2008) (holding that "the ratio needs to be calculated with respect to each defendant separately"); *Fastenal Co. v. Crawford*, 609 F.Supp.2d 650, 660 fn.3 (E.D.Ky.2009) (finding *Planned Parenthood* persuasive and holding that ratios are calculated on a defendant-by-defendant basis); *In re USA Commercial Mtge. Co.*, 802 F.Supp.2d 1147, 1189 (D.Nev.2011).

[8] The "touchstone" of a Due Process analysis is whether a defendant receives "fair notice" of the severity of a penalty that a state may impose. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996).

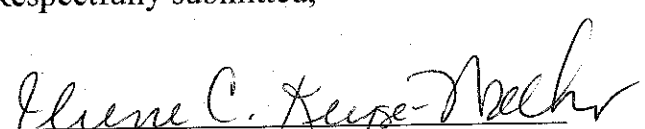
ambiguity in the language of that statute, which requires application of the cap to each award against each Defendant found to have engaged in malicious conduct. Since the Court of Appeals has already determined that Due Process is satisfied by an award in the "full amount" authorized by the punitive damage cap, the only question before this Court is to determine what that "full amount" is by application of the General Assembly's plain and unambiguous language.

In short, this Court had ample reason to decline jurisdiction over Defendants' constitutional challenge to the punitive damage awards and there is no basis for permitting Defendants to resurrect that flawed challenge.

IV. CONCLUSION

For all of the above reasons, this Court should vacate that portion of the majority decision consolidating the three corporate punitive damage awards and remand for entry of judgment consistent with the partial dissent.

Respectfully submitted,



Irene C. Keyse-Walker (0013143)
Benjamin C. Sassé (0072856)
TUCKER ELLIS & WEST LLP
1150 Huntington Building
925 Euclid Avenue
Cleveland, OH 44115-1414
Tel: (216) 592-5000
Fax: (216) 592-5009
E-mail: ikeyse-walker@tuckerellis.com
bsasse@tuckerellis.com

Shannon J. Polk (0072891)
Richard C. Haber (0046788)
HABER POLK KABAT, LLP
737 Bolivar Road, Suite 4400
Cleveland, OH 44115
Tel: (216) 241-0700
Fax: (216) 241-0739
E-mail: spolk@haberpolk.com
rhaber@haberpolk.com

Michelle Pierce Stronczer (0066531)
PIERCE STRONCZER LAW, LLC
8931 Brecksville Rd.
P.O. Box 470606
Cleveland, OH 44147-0606
Tel: (440) 262-3636 (direct)
E-mail: shelley.stronczer@piercelegal.com

Attorneys for Appellant/Cross-Appellee Ronald Luri

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 7th day of February, 2012, by U.S. Mail, postage prepaid, upon the following:

Robin G. Weaver
Stephen P. Anway
SQUIRE, SANDERS & DEMPSEY
4900 Key Tower
127 Public Square
Cleveland, OH 44114

Attorneys for Appellees/Cross-Appellants Republic Services, Inc.; Republic Services of Ohio Hauling, LLC; Republic Services of Ohio I, LLC, Jim Bowen, and Ron Krall

Eileen C. Keyse-Walker

One of the Attorneys for Appellant/Cross-Appellee Ronald Luri

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