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Justices to Hear Arguments Over 'Noneconomic' Damages for Whistleblowers

Does Pennsylvania's whistleblower law allow plaintiffs to recover noneconomic damages, such as humiliation and emotional distress?

By Max Mitchell | September 01, 2017

Does Pennsylvania's whistleblower law [allow plaintiffs to recover](http://www.thelegalintelligencer.com/id=1202783927405) (http://www.thelegalintelligencer.com/id=1202783927405) noneconomic damages, such as humiliation and emotional distress?

That is the question attorneys are set to debate after the state Supreme Court [recently outlined](http://www.pacourts.us/assets/opinions/Supreme/out/order%20-%20appeal%20dismissed%20-%2010321998722957815.pdf#search=) (http://www.pacourts.us/assets/opinions/Supreme/out/order%20-%20appeal%20dismissed%20-%2010321998722957815.pdf#search=) what issues it plans to address on appeal in the case [Bailets v. Pennsylvania Turnpike Commission](http://www.thelegalintelligencer.com/id=1202769840999) (http://www.thelegalintelligencer.com/id=1202769840999).

The justices issued a two-page order Aug. 23 agreeing to hear arguments about whether the whistleblower law allows for noneconomic damages, and whether the \$1.6 million that the Commonwealth Court awarded plaintiff Ralph Bailets last year for his alleged humiliation was arbitrary and excessive.

In October, the Commonwealth Court awarded Bailets, a former employee of the Pennsylvania Turnpike Commission, \$3.2 million for retaliation he faced after reporting alleged instances of wrongdoing and waste to turnpike supervisors.

Because the Commonwealth Court had acted as the court of original jurisdiction over the matter, the defendant's appeal in Bailets was taken up by the Supreme Court as of right, rather than at the justices' discretion.

As part of its recent ruling, the Supreme Court said the Commonwealth Court's decision was affirmed in all other respects, except for the damages question.

As it stands, Pennsylvania case law outlining what a plaintiff can recover on whistleblower retaliation claims says awards should ensure that plaintiffs are "in no worse a position for having exposed the wrongdoing." The question of exactly what that means has been hotly disputed, with defendants arguing that noneconomic damages are a clear expansion of the statute.

Commonwealth Court Judge Rochelle Friedman said that "actual damages" in whistleblower cases "must include compensation for the mental anguish, humiliation and reputation damage."

Bailets had worked for the turnpike from 1998 until he was fired in 2008, and his duties included reviewing requests for proposals.

In denying the turnpike's contention that it had legitimate reasons to fire Bailets, Friedman cited evidence showing that he had been specifically warned not to complain about Ciber, a consulting company that received multiple turnpike contracts, and that his performance evaluations were positive. The judge also cited that new employees were hired and others given raises shortly after Bailets was fired, and he was not considered for job openings with the turnpike after being terminated.

In making her determination about the noneconomic damages, Friedman credited testimony from Bailets and his wife that he suffered humiliation when he was escorted from his office and had to share the news with his family, as well as sleepless nights spent worrying about paying bills. There was "no doubt that the commission's wrongful termination of Bailets had a profound effect on Bailets and caused a major disruption to his life," she said in assigning the additional \$1.6 million award.

Friedman's opinion in Bailets was issued in October, and less than two months later it was cited as the basis for another large award in the high-profile whistleblower lawsuit that Mike McQueary, a star witness for the prosecution of convicted child molester Jerry Sandusky, brought against Penn State.

The judge handling that case, Judge Thomas Gavin, noted that the state legislature did not define the term "actual damages," but said Friedman's reasoning was persuasive before he awarded McQueary \$1 million in noneconomic damages.

Bailets is being represented by attorneys from Sprague & Sprague, including Jason Pearlman, Thomas Sprague and William Trask. Sprague did not return a call for comment.

Duane Morris attorney Robert Byer is representing the Turnpike Commission. Byer declined to comment.

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