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Va. High Court Protects Employers From Punitive Damages

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A recent ruling by the Supreme Court of Virginia should be good news for many employers in the Commonwealth who may be subject to claims seeking punitive damages arising from the actions of their employees. Significantly, the Supreme Court's decision includes a fact based analysis that provides clarity for employers on the circumstances in which they may be held liable for punitive damages for the acts of an employee. In Eagan v. Butler, 772 S.E.2d 765 (Va. 2015), the Supreme Court of Virginia held that employers cannot be held liable for punitive damages based on the actions of their employees unless the plaintiff can show that the employee was sufficiently high enough in the corporate hierarchy as to bind their employer for the purpose of punitive damages. Id. at 773-74.

The Traditional Framework of Compensatory and Punitive Damages Against Employers in the Commonwealth

Ordinarily under Virginia law, a corporate employer may be liable for the compensatory damages caused by the acts of its employees when such actions are done "in the scope of [the employee's] employment and which grow out of an act connected with the employment." Oberbroeckling v. Lyle, 234 Va. 373, 381-82, 362 S.E.2d 682, 687 (1987). The analysis for determining whether a corporate employer may be liable for punitive damages in the Commonwealth, however, has always fallen under a different standard. It does not follow that merely because a corporate employer may be liable for compensatory damages that the employer is also liable for punitive damages. Rather, "[a] principal, ... though of course liable to make compensation for the injury done by his agent, within the scope of his employment, cannot be held [liable] for ... punitive damages, merely by reason of wanton, oppressive or malicious intent on the part of the agent." Hogg v. Plant, 145 Va. 175, 180, 133 S.E. 759, 760 (1926) (internal

quotation marks and citation omitted). Therefore, "punitive damages cannot be awarded against a[n employer] for the wrongful act of his servant or agent in which he did not participate and which he did not authorize or ratify." Id. at 181, 133 S.E. at 761.

Thus, it has long been established in Virginia that a plaintiff can only hold a corporate employer liable for punitive damages if he or she can prove either: (1) that the employer participated in the wrongful acts giving rise to the punitive damages; or (2) that the employer authorized or ratified the wrongful acts. See, e.g., Lake Shore & M. S. Ry. Co. v. Prentice, 147 U.S. 101 (1893). While case law frequently attempted to clarify an employer's authorization or ratification, Eagan provides much clearer guidance. However, the Supreme Court of Virginia's recent decision, Eagan v. Butler, No. 141365, (Va. June 4, 2015), provides employer-friendly additional guidance as to when a corporate employer has participated in, authorized or ratified a wrongful act committed by its employee.

Guidance from the Supreme Court of Virginia in Eagan v. Butler

In Eagan, the plaintiff argued that because a corporate employer "can only act through its agents," it automatically followed that "any action of any employee taken on behalf of a corporate employer is necessarily the action of the corporate employer." Id., (citing Bardach Iron & Steel Co. v. Charleston Port Terminals, 143 Va. 656, 672, 129 S.E. 687, 692 (1925)). Based upon this logic, the plaintiff in Eagan argued that any employee's action is attributable to the corporate employer for purposes of assessing punitive damages. Id.

The Supreme Court rejected the plaintiff's position and reasoned that such a position would "render obsolete establishing a corporate employer's punitive damages liability by way of proving the employer's authorization or ratification of an employee's wrongful conduct." Eagan. Instead, the court adopted Section 909 of the Restatement (Second) of Torts and held that a corporate employer will only be liable for punitive damages arising from the wrongful acts of an employee if that employee holds a "sufficiently high position in the employer's corporate structure." Id. (citing Restatement (Second) of Torts § 909 ("Punitive damages can properly be awarded against a master or other principal because of an act by an agent if ... (c) the agent was employed in a managerial capacity and was acting in the scope of employment.")

Naturally, the adoption of Section 909 of the Restatement (Second) of Torts begs the following question: What qualifies as "sufficiently high position in the employer's corporate structure?" The court in Eagan found that the determination of an employee's position within the corporate structure (and, therefore, the liability that could be imputed to the corporation) is a fact-sensitive question, dependent upon the power, role and independence of the employee relative to the nature and structure of the corporate employer. See id; see also White v. Ultramar Inc., 981 P.2d 944, 954 (Cal. 1999) ("[S]upervisors who have broad discretionary powers and exercise substantial discretion authority in the corporation could be managing agents. Conversely, supervisors who have no discretionary authority over decisions that ultimately determine corporate policy would not be considered managing agents even though they may have the ability to hire or fire other employees.")

Although the Supreme Court of Virginia declined to set forth a bright-line rule, it suggests that the facts of Eagan may be used in the future as guidelines in similar cases. Id. In Eagan, the corporate employee had been working for the corporate defendant for four and a half years and held a director-level position. Id. Eagan was responsible for hiring and firing employees and in charge of "a fleet of vehicles for maintenance and purchasing." Id. The court found that, as a matter of law, this limited evidence was insufficient to establish that Eagan held a sufficiently high position within the corporate employer's

business structure to impute punitive damages liability on the corporation. Id. The court also considered several other factors, including the plaintiff's argument that the corporate employer benefited from the underlying offense, that there was video of the offense accessible to the employer's president and that those videos were viewed and destroyed either by the employee or another agent of the employer. See id. Despite plaintiff's arguments, the Virginia Supreme Court held that there was insufficient evidence to support an award of punitive damages against the employer. See id.

Applying Egan v. Butler to Traditional and Nontraditional Employers in Practice

While the Supreme Court of Virginia's ruling is encouraging for employers, any employer facing a potential punitive damages claim should be prepared to gather all evidence necessary to vigorously defend such claims based on the guidance provided in Eagan. Specifically, employers should be prepared to present as much fact-based evidence concerning the structure of the corporation's hierarchy as the employer can gather, including, but not limited to, information concerning: (1) the employee's length of employment; (2) the employee's job title; (3) the employee's job responsibilities, including both official responsibilities as well as the employee's responsibilities in day to day practice; (4) the employee's superiors; and (5) any facts demonstrating that the corporation had limited or no knowledge of the wrongful act.

The Supreme Court of Virginia's decision in Eagan also provides much-needed guidance to nontraditional employers. Recently, more and more businesses, particularly in the tech industry and start-up community, have been implementing what is known as "holacratic" business model, such as that most recently employed by Zappos.com in April of this year. Holacratic and similar nontraditional management systems spread responsibility equally among a corporation's employees rather than along a traditional hierarchy. Holacracy, How it Works. Eagan provides these employers with systems who have historically struggled to define an employee's position within their nontraditional business structure with much-needed guidance.

When faced with potential punitive damage claims, employers who implement a "holacratic" system, unlike their traditional counterparts, are faced with the daunting task of attempting to define the role of an employee within a structure without a set hierarchy. Accordingly, the Supreme Court of Virginia's fact-specific analysis in Eagan is particularly helpful. Under the court's guidance in Eagan, if the nontraditional corporate employer can demonstrate the power, role and independence of the employee relative to the nature of the corporate employer is significantly low enough, the corporate employer likely will not be held liable for punitive damages.

Conclusion

Although courts in the Commonwealth will undoubtedly expand on the Eagan holding, the Supreme Court of Virginia in Eagan provided guidance to companies with either traditional or flattened hierarchical models. Companies with a traditional management hierarchy may be liable for punitive damages when an employee's responsibilities dictate that the employer has authorized or ratified his actions, rather than the employee's title. Companies employing a holacratic or otherwise nontraditional structure, on the other hand, likely need not worry that by creating equality among employees, they will be making managers of all. An employee's power, role and independence will still guide courts, even in the absence of a traditional title.

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