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Post-Accident Conduct as a Basis for Punitive Damages

by Patrick M. Brady



Imagine you represent a truck driver who is alleged to have collided with and completely run over another driver's vehicle, killing the other driver instantly. Now imagine that, for whatever reason, your truck driver client did not stop, but instead hit the gas, got off the highway as soon as he could, and got as far away from the accident as possible. Later, your client tried to alter his logs to show that he was nowhere near the scene of the accident.

Unfortunately, your client was identified and served with a complaint alleging negligence and demanding punitive damages. The plaintiff's lawyer is chomping at the bit to tell the jury what a horrible person your client is because he ran from the scene of a fatal accident. The plaintiff's lawyer has visions of punitive damages dancing in his head, as your client's flight from the accident scene must be punished. You, of course, will do anything you can to try to keep any evidence of your client's post-accident conduct from ever reaching The question to be answered and posed to the court is: how can an event that takes place after an injury be a cause of that injury? It is axiomatic that a cause must precede its effect, and not vice versa. Conduct that occurs after an injury simply cannot cause that injury, though it may cause a new injury or exacerbate the previous injury. In such cases, post-accident conduct will become relevant. In our example, however, the victim died instantly, and nothing that the defendant did or failed to do after the accident could cause further injury to the victim.

Despite this, some courts have admitted evidence of post-accident conduct because "leaving the scene of an accident is evidence of a willful, wanton or reckless state of mind," even though "defendant's conduct after the accident was not a proximate cause of plaintiff's injuries." *Peterson v. Henning*, 452 N.E.2d 135, 138 (Ill. App. 1983); see also *Birch v. Juehring*, 2008 Iowa App. LEXIS 441, 6; *Jones v. Cruzan*, 33 P.3d 1262, 1264 (Colo. App. 2001). For example, the Colorado Court of Appeals has held that a defendant's entire course of conduct, including post-accident conduct, is relevant to the punitive damages inquiry. *Jones v. Cruzan*, 33 P.3d 1262, 1264 (Colo. App. 2001). In *Jones*, the defendant,

while fantasizing that he was flying an aircraft to Paris, drove on the wrong side of the street, over the speed limit, through a stop sign, and into a busy intersection where his car was hit by plaintiff's car. Defendant did not stop, but continued through the intersection, eluded a pursuing witness at speeds up to eighty miles per hour, and returned to his house via a back route. *Id.*

This entire course of conduct "tended to show that defendant had been operating his vehicle heedlessly, recklessly, and without regard to the consequences or the safety of others." *Id.* The pre-accident conduct was certainly a cause of the plaintiff's injuries, and could arguably be willful and wanton to a degree justifying punitive damages. The court did not address the question of whether the defendant's post-accident conduct caused any injury to the plaintiff. Instead, it appears that the Court lumped all of the pre- and post-accident conduct into the "entire course of conduct," and found that this was relevant for punitive damages. *Jones* shows us how important it is to try to separate a defendant's post-accident conduct from his pre-accident conduct to avoid an "entire course of conduct" argument.



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The big problem with *Jones* is that, by admitting post-accident conduct for the purposes of punitive damages, the court gives the jury an opportunity to punish the defendant for conduct that could not cause the plaintiff's injuries. The U.S. Supreme Court has stated, "[a] defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423 (2003) (emphasis added). If post-accident conduct did not cause any harm to the plaintiff, then it follows that it cannot form the basis for punitive damages.

The Arizona Court of Appeals has recognized this problem, holding, "the overarching principle that we recognize today, which several other jurisdictions have already recognized, is that the conduct giving rise to punitive damages must be a proximate cause of the harm inflicted." *Saucedo v. Salvation Army*, 24 P.3d, 1274, 1279 (Ariz. App. 2001). The fact pattern in *Saucedo* is nearly identical to our fact pattern above. Edward Stuart struck and killed Exiquio Sinaloa with the Salvation Army van Stuart was driving. Sinaloa "either died on impact or within an extremely short time thereafter." *Id.* at 1275. According to Stuart, he thought he hit a trash bag and continued on his way. *Id.* The court framed the inquiry this way: "[i]n light of the evidence that Mr. Sinaloa died on impact or almost immediately after impact, the inquiry is whether Mr. Stuart's failure to stop at the scene of the accident caused Mr. Sinaloa further injury." *Id.* at 1278. The court held, given that Sinaloa died on impact or shortly thereafter,

Mr. Stuart's failure to remain at the scene of the accident was not, as a matter of law, a proximate cause of Mr. Sinaloa's death, nor did this failure contribute in any degree to his injury. ...Regardless of whether Mr. Stuart knew that Mr. Sinaloa was dead, Mr. Stuart could inflict no more harm upon Mr. Sinaloa by fleeing the scene, nor could he have obviated any substantial risk of harm had he remained at the scene. No further harm or risk of substantial harm could have flowed from his failing to stop and render assistance. *Id.*

Stuart's conduct after the accident simply could not have caused Sinaloa's death and was appropriately found to be inadmissible.

In the case of *Kehl v. Economy Fire & Cas. Co.*, 433 N.W.2d 279 (Wis. App. 1988), the Wisconsin Court of Appeals framed the issue in terms of whether a plaintiff could recover compensatory damages for post-accident conduct where there is no evidence that the post-accident conduct caused any injury to the plaintiff. In *Kehl*, the jury awarded punitive damages based on the defendant's flight from the scene of a motor vehicle accident. The appellate court reversed the punitive damages award, finding that the post-accident conduct was a "separate volitional act" that "had the potential to spawn a separate claim had it aggravated [plaintiff's] injuries or caused new harm." *Id.* at 281. The parties had stipulated that the post-accident conduct did not cause any damages to the plaintiff, and therefore the plaintiff could not recover any compensatory damages based on the post-accident conduct. *Id.* The court could not award punitive damages for post-accident conduct unless the plaintiff suffered compensatory damages because of the post-accident conduct. *Id.*

Finally, the defendant should always remember Federal Rules of Evidence 401 and 403, or their equivalent, when attempting to exclude post-accident conduct. Post-accident conduct that is not causally related to the plaintiff's injuries does not make it any more or less likely that the defendant breached a duty in a way that caused injury to the plaintiff. Moreover, while post-accident conduct may be relevant to the defendant's state of mind after the accident, it is likely not relevant to the whether the defendant had a willful, wanton, or reckless state of mind prior to the accident.

In addition, post-accident conduct not causally related to the plaintiff's injuries would confuse and mislead the jury without adding anything of substance to the actual issue. *Fisher v. Trapp*, 748 P.2d 204, 207 (Utah App. 1988). A defendant's flight could indicate "fear or remorse just as easily as consciousness of guilt." *Id.* More importantly, evidence of post-accident conduct could be a powerful means by which the plaintiff identifies the defendant as a callous and uncaring driver, much to the driver's prejudice. This evidence would likely have "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403, Advisory Cmte. Note. When



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the post-accident conduct has no causal relation to the plaintiff's injuries, the dangers of unfair prejudice, confusion of the issues, and misleading the jury substantially outweigh the minimal to nonexistent probative value of post-accident conduct.

When confronted with post-accident conduct and a claim for punitive damages, defense lawyers would be wise to focus on causation, or more importantly, the lack thereof. Punitive damages should only be assessed for conduct that actually causes harm to the plaintiff. In many cases, such as our fact pattern above, a defendant's post-accident conduct has no causal relation to the plaintiff's injuries, and would only be useful to suggest a decision on an improper basis. Regardless of how reprehensible a defendant's post-accident conduct may be, civil courts should not punish conduct that is unrelated to the plaintiff's injuries.

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