



## Alerts

### Punitive Damages Are Now Available in Wrongful Death and Survival Claims in Illinois

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*Insights for Insurers*

A new Illinois law that aims to increase jury awards demonstrates that juries are not the only culprits of social inflation. Certainly, juries can render nuclear and thermonuclear verdicts, disregard jury instructions, place notions of ability to pay above fundamental concepts of fault and causation, and rely upon information other than admissible evidence in rendering verdicts. However, judges and legislative bodies also are responsible for nuclear verdicts and social inflation, via improper and ill-conceived legal and evidentiary rulings and nuclear legislation. See S.M. Seaman and J.R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (11th Ed. Thomson Reuters 2023) at Chapter 19; S. Seaman, "Updated Social Inflation Survival Guide: The Dangerous Triple Barrel Threat of Social Inflation, Economic Inflation, and Greenflation in a Judicial Environment Swarming With Reptiles and Raining Nuclear Verdicts" *J.D. Supra* (May 2, 2023).

One of many recent examples of legislation calculated to increase jury awards and likely to spur additional social inflation can be found in Illinois, with legislation signed into law on August 11, 2023, allowing punitive damage awards in wrongful death and survival actions. More than 30 years ago, the Illinois Institute of Continuing Legal Education (IICLE) published the first edition of *Wrongful-Death and Survival Actions* (S. Seaman General Editor and contributing author). From that edition through the Seventh Edition published last December, the authors of this guide correctly reported that punitive damages were unavailable under Illinois wrongful death action and rarely available (only when expressly authorized by statute) in survival actions. See *Wrongful-Death and Survival Actions* (IICLE 2022) at 2.8. The purpose of the Wrongful Death Act is to compensate the surviving spouse and next of kin for pecuniary losses, not to punish the defendants.

On August 11, 2023, Illinois changed its approach when Illinois Governor J.B. Pritzker signed into law a bill that amends 740 ILCS 180/1, 740 ILCS 180/2, and 755 ILCS 5/27-6 to allow the recovery of punitive damages in wrongful death and survival actions. Punitive damages are recoverable in wrongful death claims on cases filed on or after August 11, 2023, and punitive damages may be sought on cases existing on the effective date. Punitive damages still are not recoverable in actions against doctors, lawyers, and public entities pursuant to 735 ILCS 5/2-1115, 745 ILCS 10/2-102, and 745 ILCS 10/2-213.

#### Attorneys

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As with any claim in which punitive damages are sought in Illinois, a plaintiff must file a motion seeking leave to plead a punitive damages claim. Such a claim will be allowed only where the plaintiff establishes at a hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. 735 ILCS 5/2-604.1. Allowing punitive damage awards in cases involving the ultimate tragedy – the death of an individual – is likely to increase jury awards and contribute to social inflation.

## Media Coverage

This alert was cited by the *Cook County Record* in an article titled "[New IL law opens employers, others to risk of massive punitive damages in wrongful death cases.](#)"