

PLAINTIFF MUST MAKE PRIMA FACIE SHOWING THAT PUNITIVE DAMAGES ARE AWARDABLE BEFORE DISCOVERY ON DEFENDANT'S FINANCES ARE ALLOWED

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Arpaio v. Figueroa

Ct. Appeals, Division Two, April 30, 2012

Authored by the [JSH Appellate Team](#)

Plaintiff alleged that her mother, a diabetic, died as a result of spending three days in a Maricopa county jail without insulin or treatment for complications caused by the lack of insulin. Plaintiff sought compensatory and punitive damages against the individual Defendants. At a pretrial hearing, Plaintiff pointed out that she asserted a claim for punitive damages, and that while she was not entitled to see Defendants' financial statements at that point, the production of that information at a later date might lead to a delay. In response, the court ordered the Defendants to gather their financial information and provide it to their attorneys so it would be available if it determined Plaintiff had made the requisite prima facie showing for punitive damages. Two days later, Defendants requested a protective order with respect to their personal financial information. The court denied that motion, believing he did not have authority to issue such an order. Defendants filed a special action.

The court of appeals held the trial court abused its discretion by ordering Defendants to produce their financial information in the absence of a finding that Plaintiff had made a prima facie showing on the issue of punitive damages. The policy reasons for requiring a prima facie showing include the need to protect the defendant from an unwarranted invasion of privacy and harassment where the plaintiff has merely asserted a punitive damages claim. While the trial court's order did not require Defendants to disclose the information to Plaintiff, it nevertheless required Defendants to find, compile, and provide their counsel with their financial information, which could be viewed as more harassing and burdensome to Defendants than any subsequent disclosure. The court said a trial court should determine, as soon as reasonably possible – at a discovery hearing or pre trial conference – whether a party has made a prima facie showing (through discovery, evidentiary means or an offer of proof) that punitive damages will be in the case. If the prima facie showing is made, then the plaintiff is permitted to discover the defendant's financial condition.

Finally, the trial court erred in believing it lacked authority to issue a pretrial protective order. Ariz. R. Civ. P. 26(c)(1).