

**Ct. Cl. Act § 8: Waiver of Sovereign Immunity Does Not Permit  
Assessment of Punitive Damages Against the State or Its Political  
Subdivisions**

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tion to be in conflict with that purpose, and thus obtained the same result while remaining entirely consistent with the *Cort* analysis.<sup>46</sup>

It is suggested, however, that the failure of the *Lindner* court to adhere to a strict *Cort* analysis evidences a recognition of the potential problems and implications inherent in selecting between two underlying statutory purposes of equal import.<sup>47</sup> The conclusion that the predominant purpose of the Taylor Law was to promote harmonious employer-employee relationships, and not to protect the general public, would inevitably undermine the statute's historically recognized public benefit function.<sup>48</sup> The *Lindner* court should be commended for recognizing and protecting the competing legislative purposes of the Taylor Law. It is hoped that future interpretations of the Taylor Law likewise will preserve the delicate balance between promotion of organized labor and protection of the public.

Douglas Wamsley

#### COURT OF CLAIMS ACT

*Ct. Cl. Act § 8: Waiver of sovereign immunity does not permit assessment of punitive damages against the state or its political subdivisions*

The State of New York was among the first jurisdictions to waive its common-law sovereign immunity from liability.<sup>49</sup> Section

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<sup>46</sup> See *Cort v. Ash*, 422 U.S. 66, 78 (1975).

<sup>47</sup> See N.Y. CIV. SERV. LAW § 200 (McKinney 1973).

<sup>48</sup> See *supra* note 29.

<sup>49</sup> See Court of Claims Act, ch. 467, § 12-a, [1929] N.Y. LAWS 994 (current version at N.Y. CT. CL. ACT § 8 (McKinney 1963)). Although a court of claims existed as early as 1897, see ch. 36, § 263, [1897] N.Y. LAWS 14-15, the Court of Claims Act did not come into existence until 1920, see ch. 922, § 2, [1920] N.Y. LAWS 3. The Court of Appeals created a problem, however, when it held that section 264 of the Code of Civil Procedure, which became section 12 of the Court of Claims Act, did not constitute a waiver of sovereign immunity. See *Smith v. State of New York*, 227 N.Y. 405, 409, 125 N.E. 841, 842 (1920). The apparent effect of the *Smith* decision was to impose liability upon the state for its employees' torts, provided that the employees acted in accordance with a specific law. See A Consideration of Section 176 of the Highway Law and Section 12-A of the Court of Claims Act, [1936] N.Y. LAW REV. COMM'N REP. 953, 963. State liability thus was limited to torts arising from conduct undertaken pursuant to the Highway Law. *Id.*; ch. 371, § 17, [1922] N.Y. LAWS 790. In 1929, due largely to the efforts of Governor Alfred Smith, the legislature enacted section 12-a of the Court of Claims Act. See McNamara, *The Court of Claims: Its Development and Present Role in the Unified Court System*, 40 ST. JOHN'S L. REV. 1, 11 (1965).

8 of the New York Court of Claims Act currently provides for a broad assumption of liability by the state,<sup>50</sup> but is silent on the issue of punitive damages.<sup>51</sup> While a majority of jurisdictions that have considered this question have held that, in the absence of statutory authority, the state cannot be held liable for punitive damages,<sup>52</sup> New York courts have failed to resolve the issue.<sup>53</sup> Recently, however, in *Sharapata v. Town of Islip*,<sup>54</sup> the Court of Appeals held that section 8 of the Court of Claims Act does not permit the assessment of punitive damages against the state or its political subdivisions.<sup>55</sup>

On July 27, 1976, Richard Sharapata, a 12-year-old youth, was

This section, which provided for a general assumption of tort liability by the state, was amended to its present form in 1939. *See* ch. 860, § 8, [1939] N.Y. LAWS 2178, 2181. For a more detailed history of state tort liability in New York, see McNamara, *supra*, at 4-14; MacDonald, *The Administration of a Tort Liability Law in New York*, 9 LAW & CONTEMP. PROBS. 262, 262-74 (1942). For a general history of municipal tort liability in the United States, see C. RHYNE, MUNICIPAL LAW § 30-1, at 730-32 (1957).

<sup>50</sup> Section 8 of the Court of Claims Act provides:

The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations, provided the claimant complies with the limitations of this article. Nothing herein contained shall be construed to affect, alter or repeal any provision of the workmen's compensation law.

N.Y. Ct. Cl. Act § 8 (McKinney 1963).

<sup>51</sup> *See id.*

<sup>52</sup> *See, e.g.*, *Fisher v. Miami*, 172 So. 2d 455, 457 (Fla. 1965); *Chappel v. Springfield*, 423 S.W.2d 810, 814-15 (Mo. 1968); *Ranells v. City of Cleveland*, 41 Ohio St. 2d 1, 6, 321 N.E.2d 885, 889 (1975); *Nixon v. Oklahoma City*, 555 P.2d 1283, 1285-86 (Okla. 1976); *see also* 18 E. McQUILLIN, MUNICIPAL CORPORATIONS § 53.18a, at 161-62 (3d ed. 1977).

<sup>53</sup> In *McCandless v. State of New York*, 6 Misc. 2d 391, 166 N.Y.S.2d 272 (Ct. Cl. 1956), a patient in a state hospital for the mentally retarded was assaulted by another patient. The court stated that it was awarding compensatory damages only, since the state was not subject to punitive damages. *Id.* at 395, 166 N.Y.S.2d at 277. On appeal, neither the third department, 3 App. Div. 2d 600, 162 N.Y.S.2d 570 (3d Dep't 1957), nor the Court of Appeals, 4 N.Y.2d 797, 149 N.E.2d 530, 173 N.Y.S.2d 30 (1958), reached the question of punitive damages. In *Hayes v. State of New York*, the Court of Claims awarded punitive damages to a plaintiff who was assaulted by an attendant in a state hospital. 80 Misc. 2d 498, 510, 363 N.Y.S.2d 986, 998 (Ct. Cl. 1975). The third department reversed without addressing the issue of state liability for punitive damages, 50 App. Div. 2d 693, 694, 376 N.Y.S.2d 647, 649 (3d Dep't 1975), and the Court of Appeals affirmed, 40 N.Y.2d 1044, 360 N.E.2d 959, 392 N.Y.S.2d 282 (1976); *see also* *Mastrodonato v. Town of Chili*, 39 App. Div. 2d 824, 825, 333 N.Y.S.2d 89, 90 (4th Dep't 1972); *Snyder v. State of New York*, 20 App. Div. 2d 827, 827, 247 N.Y.S.2d 757, 758 (3d Dep't 1964); *Raplee v. City of Corning*, 6 App. Div. 2d 230, 232, 176 N.Y.S.2d 162, 165 (4th Dep't 1958).

<sup>54</sup> 56 N.Y.2d 332, 437 N.E.2d 1104, 452 N.Y.S.2d 347 (1982).

<sup>55</sup> *Id.* at 334, 437 N.E.2d at 1105, 452 N.Y.S.2d at 348.

playing in a park owned by the defendant town.<sup>56</sup> While using an allegedly defective piece of playground equipment, he fell and sustained serious personal injuries.<sup>57</sup> The original complaint against the town sought compensatory damages only,<sup>58</sup> but, while the case was pending, the plaintiff-parents moved for leave to amend their complaint to seek punitive damages.<sup>59</sup> The plaintiffs based this motion upon information indicating that the town was aware of the hazardous condition of the playground slide prior to their son's accident, and had failed to remedy it.<sup>60</sup> Special term granted the motion,<sup>61</sup> but the Appellate Division, Second Department, reversed,<sup>62</sup> holding that punitive damages could not be assessed against the state or its political subdivisions.<sup>63</sup>

On appeal, the Court of Appeals affirmed, stating that the "twin justifications for punitive damages—punishment and deterrence—are hardly advanced when applied to a governmental unit."<sup>64</sup> Judge Fuchsberg, writing for a unanimous Court,<sup>65</sup> ob-

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<sup>56</sup> *Sharapata v. Town of Islip*, 82 App. Div. 2d 350, 351, 441 N.Y.S.2d 275, 276 (2d Dep't 1981).

<sup>57</sup> *Id.* The boy fell from a height of 10 feet and sustained serious injuries to his lower back and spine. *Id.* at 353, 441 N.Y.S.2d at 277.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 353-54, 441 N.Y.S.2d at 277-78.

<sup>60</sup> *Id.* On September 18, 1975, approximately 10 months before Sharapata's accident, the town's safety officer was informed of the slide's dangerous condition in a letter from the loss prevention representative of the town's insurer. *Id.* at 351, 441 N.Y.S.2d at 276. In this letter, the representative, Joseph McNamara, described the condition of the slide and three previous accidents that had occurred on it. *Id.* Despite the representative's recommendation that the slide be removed, the safety officer of the town took no action until May 3, 1976, when he inspected the slide with McNamara. *Id.* at 352, 441 N.Y.S.2d at 277. Two days later, McNamara wrote another letter to the safety officer describing the deteriorating condition of the slide, and again recommended its removal. *Id.* at 352-53, 441 N.Y.S.2d at 277. No action had been taken by the time Sharapata was injured on July 27, 1976. *Id.* at 353, 441 N.Y.S.2d at 277. The plaintiffs contended that the town's failure to remedy a dangerous condition within its control, despite notice and recommendations, constituted reckless conduct justifying an award of punitive damages. *Id.* at 354, 441 N.Y.S.2d at 278.

<sup>61</sup> *See id.*

<sup>62</sup> *Id.* at 367, 441 N.Y.S.2d at 285.

<sup>63</sup> *Id.*

<sup>64</sup> 56 N.Y.2d at 338, 437 N.E.2d at 1107, 452 N.Y.S.2d at 350. Punitive damages serve a very different purpose than compensatory damages. Compensatory damages are awarded to force the tortfeasor to make good the loss caused by his or her conduct. *See* 13 N.Y. JUR. DAMAGES § 9 (1960). Punitive damages, on the other hand, are "awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future." 4 RESTATEMENT (SECOND) OF TORTS § 908 (1979); *see* *Hamilton v. Third Ave. R.R.*, 53 N.Y. 25, 28 (1873). The wrongdoer's conduct must be far worse than ordinary negligence in order to have punitive damages imposed. When punitive damages are assessed against the defendant, he is usually said to have engaged in "outrageous or inten-

served that it would be illogical to have taxpayers bear the burden of the punishment when they are the same group that is supposed to benefit from the example made of the wrongdoer.<sup>66</sup> The Court also noted that punitive damages are calculated with reference to the monetary worth of the tortfeasor,<sup>67</sup> and that it would be impractical to consider the financial resources of the sovereign in the computation of the award.<sup>68</sup> Furthermore, Judge Fuchsberg found the public policy of New York to be opposed to assessment of punitive damages against the sovereign,<sup>69</sup> and stated "that a statute in derogation of the sovereignty of a state must be strictly con-

tional misconduct" or to have acted with "reckless or wanton disregard for the safety of others." *Morris, Punitive Damages in Personal Injury Cases*, 21 OHIO SR. L.J. 216, 216 (1960); *see Reid v. Terwilliger*, 116 N.Y. 530, 534, 22 N.E. 1091, 1092 (1889); RESTATEMENT (SECOND) OF TORTS § 908 (1979); W. PROSSER, HANDBOOK OF THE LAW OF TORTS 9-10 (4th ed. 1971).

<sup>66</sup> Judge Fuchsberg was joined by Chief Judge Cooke and Judges Jasen, Gabrielli, Jones, Wachtler, and Meyer.

<sup>67</sup> 56 N.Y.2d at 338-39, 437 N.E.2d at 1107, 452 N.Y.S.2d at 350. The fact that the taxpayers themselves ultimately pay for punitive damages is perhaps the reason most frequently given for not allowing punitive damages to be assessed against the state or a municipality. *See, e.g., Fisher v. Miami*, 172 So. 2d 455, 457 (Fla. 1965); *Gary v. Falcone*, 169 Ind. App. 295, 348 N.E.2d 41, 42 (Ct. App.-1976); *Chappell v. Springfield*, 423 S.W.2d 810, 814 (Mo. 1968); *Nixon v. Oklahoma City*, 555 P.2d 1283, 1285-86 (Okla. 1976); *see also* 18 E. McQUILLIN, *supra* note 52, § 53.18a, at 161-62. *But see Young v. City of Des Moines*, 262 N.W.2d 612, 621-22 (Iowa 1978); Hines, *Municipal Liability for Exemplary Damages*, 15 CLEV.-MAR. L. REV. 304, 310 (1966). One commentator has argued that the relationship between the taxpayer and the municipal corporation is identical to that of a stockholder to a private corporation. *Id.* The contention is that because the legal entity, not the taxpayer, would be punished by punitive damages, municipal corporations, like private corporations, should be held liable for exemplary damages. *Id.* at 312.

<sup>68</sup> 56 N.Y.2d at 339, 437 N.E.2d at 1107, 452 N.Y.S.2d at 350.

<sup>69</sup> *Id.* In *Ranells v. City of Cleveland*, 41 Ohio St. 2d 1, 321 N.E.2d 885 (1975), the Supreme Court of Ohio acknowledged that evidence of the defendant's wealth normally must be admitted in order to determine the size of the punitive damages award. The court noted:

When the defendant is a municipal corporation, however, admitting such evidence raises the specter of astronomical judgments — because the financial resources of a municipal corporation are, essentially, unlimited. . . . Yet to eliminate evidence of wealth destroys the punishment rationale by which punitive damages are justified. In neither situation is a satisfactory result achieved.

*Id.* at 8, 321 N.E.2d at 889; *see Fisher v. Miami*, 172 So. 2d 455, 457 (Fla. 1965).

<sup>69</sup> 56 N.Y.2d at 336-37, 437 N.E.2d at 1106, 452 N.Y.S.2d at 349. In evaluating the state's policy regarding the assessment of punitive damages against a sovereign, Judge Fuchsberg cited *Costich v. City of Rochester*, 68 App. Div. 623, 73 N.Y.S. 835 (4th Dep't 1902), which was decided prior to the enactment of the Court of Claims Act. The *Costich* court stated that there were "weighty reasons" of public policy that made municipal liability for punitive damages undesirable. *Id.* at 631, 73 N.Y.S. at 841. The *Costich* court specifically noted, however, that it was not holding that a municipal corporation could never be liable for punitive damages. *Id.* at 626, 73 N.Y.S. at 837.

strued, waiver of immunity by inference being disfavored."<sup>70</sup> Finally, the silence of section 8 regarding the question of punitive damages, coupled with the state's recent refusal to indemnify public employees for exemplary damages,<sup>71</sup> led the Court to conclude that the Legislature did not intend to expose the state to liability for punitive damages.<sup>72</sup>

With *Sharapata*, the Court of Appeals has settled a long-standing question in New York.<sup>73</sup> In so doing, the Court has adopted both the position and reasoning of the majority of jurisdictions that have considered the issue of sovereign liability for punitive damages.<sup>74</sup> Although the Iowa Supreme Court has interpreted a similar general tort liability statute to allow the assessment of punitive damages against the sovereign,<sup>75</sup> and two lower court decisions in New York have reached the same result,<sup>76</sup>

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<sup>70</sup> 56 N.Y.2d at 336, 437 N.E.2d at 1106, 452 N.Y.S.2d at 349 (citing *Goldstein v. State of New York*, 281 N.Y. 396, 24 N.E.2d 97 (1939); *Smith v. State of New York*, 227 N.Y. 405, 125 N.E. 841 (1920)).

<sup>71</sup> See N.Y. PUB. OFF. LAW §§ 17(3)(a), (c), 18(4)(b), (c) (McKinney Supp. 1981-1982). Section 17(3)(c) states that "[n]othing in this subdivision shall authorize the state to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties . . ." *Id.* § 17(3)(c).

<sup>72</sup> 56 N.Y.2d at 338, 437 N.E.2d at 1107, 452 N.Y.S.2d at 350.

<sup>73</sup> See *id.*; *supra* note 53.

<sup>74</sup> See *supra* note 66 and accompanying text.

<sup>75</sup> *Young v. City of Des Moines*, 262 N.W.2d 612, 622 (Iowa 1978). The Iowa Supreme Court contended that if the sovereign were subject to punitive damages, more care would be exercised in selecting and training employees. *Id.* at 621-22. Punitive damages would, therefore, be fulfilling the purpose of deterrence. *Id.* at 622. Evidence of wealth, the court contended, could be admitted. *Id.* The size of the award still would be left to the jury, subject to judicial review. *Id.* The court also noted that similar objections to punitive damages had "been made and rejected as to private corporations." *Id.* at 621. The analogy made by the court between private corporations and municipal corporations, however, seemingly fails to consider the differences between the two entities. As the fourth department stated in *Costich v. City of Rochester*:

[Private corporations] are largely created and administered for purposes of profit or for some other personal object. Those who become members of them do so voluntarily, and in the majority of instances in the hope of gain. There are manifold and speedy ways by which to reach and replace any representative . . . The municipal corporation is different. It is not organized for any purpose of gain or profit, but is a legal creation engaged in carrying on government and administering its details for the general good and as a matter of public necessity. The individuals who in the aggregate constitute it and submit certain of their affairs to its control and management are not always volunteers in so doing.

68 App. Div. at 631, 73 N.Y.S. at 841.

<sup>76</sup> See *Hayes v. State of New York*, 80 Misc. 2d 498, 363 N.Y.S.2d 986 (Ct. Cl.), *rev'd*, 50 App. Div. 2d 693, 376 N.Y.S.2d 647 (3d Dep't 1975), *aff'd*, 40 N.Y.2d 1044, 360 N.E.2d 959, 392 N.Y.S.2d 282 (1976); *Eifert v. Bush*, 51 Misc. 2d 248, 272 N.Y.S.2d 852 (Sup. Ct. Nassau County 1966), *modified in part*, 27 App. Div. 2d 950, 279 N.Y.S.2d 368 (2d Dep't

it nevertheless is submitted that the Court of Appeals decision in *Sharapata* is correct in light of its logical consistency and the prevailing public policy.

Punitive damages are a windfall to the tort victim; as such, they are justified only insofar as they punish the tortfeasor and deter him, as well as others, from similar conduct.<sup>77</sup> To hold the state or its political subdivisions liable for punitive damages, however, ultimately, can only result in the punishment of those people who supposedly are benefitted from such an award.<sup>78</sup> The *Sharapata* decision also comports with the Supreme Court's recent interpretation of section 1983 of title 42 of the United States Code,<sup>79</sup> a statute that addresses the liability of state officials for civil rights violations. In *City of Newport v. Fact Concerts, Inc.*,<sup>80</sup> the Supreme Court held that section 1983, which, like section 8 of the Court of Claims Act, is silent with respect to punitive damages, does not permit the assessment of exemplary damages against a municipality.<sup>81</sup> Writing for the Court, Justice Blackmun stated

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1967), *aff'd mem.*, 22 N.Y.2d 681, 238 N.E.2d 759, 291 N.Y.S.2d 372 (1968). In *Hayes*, the court awarded the plaintiff, who had been assaulted by an attendant in a state hospital, \$5,000 as punitive damages. Writing for the Court of Claims, Judge Lengyel stated:

I am unable to find any language in the State Constitution or in section 8 which says "except in the instance of punitive damages." This being so, to hold that the State of New York is not subject to an award for punitive damages is to impress a judicial limitation upon the clear and unequivocal language of the Legislature.

80 Misc. 2d at 505, 363 N.Y.S.2d at 994. Although the appellate division reversed the *Hayes* decision, 50 App. Div. 2d 693, 376 N.Y.S.2d 647 (3d Dep't 1975), and the Court of Appeals affirmed the third department, 40 N.Y.2d 1044, 360 N.E.2d 959, 392 N.Y.S.2d 282 (1976), neither court addressed the issue of state liability for punitive damages. In *Sharapata*, the third department termed Judge Lengyel's argument persuasive, but then rejected it. 82 App. Div. at 365, 441 N.Y.S.2d at 284.

<sup>77</sup> See *supra* text accompanying note 64.

<sup>78</sup> See *supra* text accompanying note 66.

<sup>79</sup> 42 U.S.C. § 1983 (Supp. III 1979). Section 1983 provides a private cause of action against any person who, under color of law, regulation, custom or usage of any state or territory or the District of Columbia, deprives someone else of his civil rights.

<sup>80</sup> 453 U.S. 247 (1981).

<sup>81</sup> *Id.* at 271. Justice Blackmun comprehensively reviewed the policy reasons against holding the sovereign liable for punitive damages. *Id.* at 258-71. Justice Blackmun concluded that "[d]amages awarded for *punitive* purposes, therefore, are not sensibly assessed against the governmental entity itself." *Id.* at 267 (emphasis in original).

Another federal statute, the Federal Tort Claims Act, specifically prohibits the assessment of punitive damages against the United States. See 28 U.S.C. § 2674 (1976). Although it has been argued that section 8 of the Court of Claims Act also would expressly prohibit the imposition of punitive damages if that were its intent, see *supra* note 64 and accompanying text, it nevertheless appears that the policy considerations underlying the Federal Tort Claims Act similarly provide support for the *Sharapata* decision.

that only the taxpayers would be punished if punitive damages were assessed against the municipality.<sup>82</sup> Indeed, the Court concluded, “[n]either reason nor justice suggests that such retribution should be visited upon the shoulders of blameless or unknowing taxpayers.”<sup>83</sup>

Solutions less drastic than the *Sharapata* Court’s blanket rejection of sovereign liability for punitive damages have been proposed. For example, the *Sharapata* Court itself alluded favorably to a “legislative scheme” that would permit imposition of liability for punitive damages upon the employee and would exempt the governmental entity itself from that risk.<sup>84</sup> Another possibility would be for the legislature to amend the Court of Claims Act to permit assessment of punitive damages against the sovereign, just as it recently has amended the Estates, Powers and Trusts Law to allow recovery of exemplary damages in wrongful death actions.<sup>85</sup> It is submitted, however, that neither proposal is entirely satisfactory. First, from a plaintiff’s perspective, employees lack the financial resources of the sovereign, and rarely would be able to satisfy a judgment of punitive damages.<sup>86</sup> Second, the expansion of punitive damages liability into the wrongful death area was justified by the punishment and deterrence rationales.<sup>87</sup> Sovereign liability for punitive damages, on the other hand, is clearly inappropriate in view of the stated objectives of exemplary damages.<sup>88</sup> The *Sharapata* Court’s interpretation of section 8 recognizes the distinction and avoids such an inconsistent result.

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<sup>82</sup> 453 U.S. at 267.

<sup>83</sup> *Id.*

<sup>84</sup> 56 N.Y.2d at 339, 437 N.E.2d at 1108, 452 N.Y.S.2d at 351.

<sup>85</sup> Ch. 100, § 5-4.3(b), [1982] N.Y. Laws 217 (McKinney).

<sup>86</sup> See W. PROSSER, *supra* note 64, at 459. A traditional justification for the doctrine of vicarious liability has been the superior financial resources available to the employer. *Id.*

<sup>87</sup> See Broder, *Punitive Damages in Death Actions*, N.Y.L.J., Sept. 9, 1982, at 1, col. 1. The legislature was praised for amending the statute so as to allow recovery of punitive damages in wrongful death actions. *Id.* at 2, col. 1. Indeed, it has been asserted, in the area of wrongful death, that “many crying wrongs will undoubtedly be righted under the aegis of punitive damages.” *Id.*

<sup>88</sup> See 56 N.Y.2d at 338-39, 437 N.E.2d at 1107-08, 452 N.Y.S.2d at 350-51.