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# VN E W S O F A L U E

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## PUNITIVE DAMAGES: ANYTHING BUT PUNY

Some high-profile lawsuits against businesses have brought national attention to excessive awards for punitive damages. Remember the 81-year-old woman who sued McDonald's for negligence after she was burned by coffee she bought at a drive-through window? She was awarded \$160,000 in compensatory damages and \$2.7 million in punitive damages. (A higher court later reduced the punitive damages to \$480,000.)

Community associations are vulnerable to being sued if anyone—resident, visitor, salesperson, contractor, or guest—is injured on the premises. Increasingly, community associations are finding it necessary to cover all their bases with regard to risk exposure. Although a standard insurance policy is obviously the front line in this defense, umbrella insurance is becoming the bottom line. Lawsuits are commonplace and juries are unpredictable when rendering judgments or awards, making the type of coverage provided by umbrella insurance a necessity.

Community associations owe it to their members to obtain appropriate umbrella liability insurance coverage that includes coverage for punitive damages for their specific situations.

### What Are Punitive Damages?

Punitive damages are awarded to punish the defendant for intentional or malicious misconduct or to deter similar future misconduct, not to compensate a plaintiff for loss. The theory behind punitive damages—behavior that harms society should be discouraged—sounds reasonable, but problems arise when juries impose major penalties for minor injuries.

The American Tort Reform Association (ATRA) says that although punitive damage awards are not common, their frequency and size have grown greatly in recent years, and they are routinely asked for in civil lawsuits. Although it is impossible to predict whether punitive damages will be awarded by a jury in any particular case, the trend is towards astronomically large amounts when they are awarded. This has led to inconsistent outcomes in similar cases.

### What Can Community Associations Do To Protect Themselves?

All businesses, including community associations, are vulnerable to society's penchant for suing. A community association's assets could be put in jeopardy by the expense of defending a civil suit. In the District of Columbia, Maryland, and Virginia, punitive damages may be awarded, and they are insurable.

Community associations should obtain appropriate umbrella liability insurance coverage that includes coverage for punitive damages. Because no "standard" umbrella policy exists, it is important to work closely with an insurance professional to design a policy that meets your community association's particular needs. A community association umbrella policy should extend over the underlying general, auto, employers, and Directors and Officers liability coverages and should cover punitive damages if permitted by law.

**Questions Or Concerns?** If you need some answers, please call Steve Dickerson at Morgan & Cheves, Inc. (703-739-2346) or your association attorney.

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