

## **Factual Background:**

Kimberly Jo Hucovski and Steven Michael Huskovski were involved in a domestic altercation, which resulted in Ms. Hucovski filing a Complaint in District Court for personal injuries and emotional distress caused by Mr. Hucovski's beatings. Ms. Hucovski now wishes to amend her complaint to include a claim for punitive damages pursuant to Minn. Stat. §549.191 and §549.20.

Ms. Hucovski supports her argument by pointing to the fact that Mr. Hucovski threw her around their home multiple times during the incident and pled guilty to domestic assault. She claims that these facts lead to the conclusion that Mr. Hucovski acted with "deliberate disregard" for her rights or safety.

Mr. Hucovski responds by arguing that any motion to add a claim for punitive damages is premature because discovery is not complete. He further argues that Ms. Hucovski failed to submit evidence in an appropriate manner to support the motion, because the evidence was presented through the lawyer's affidavit. Finally, he claims that the evidence is equivocal enough in any event that the motion should be denied.

## **Relevant Law:**

*Minnesota Statutes §549.191:*

Upon commencement of a civil action, the complaint must not seek punitive damages. After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section [549.20](#) or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

*Minnesota Statutes §549.20:*

### **Subd. 1. Standard.**

(a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

*Subd. 2 omitted*

**Subd. 3.Factors.**

Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, including the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

*Subds. 4-5 omitted*