In the Missouri Court of Appeals
Eastern District

SAINT LOUIS UNIVERSITY LAW SCHOOL DIVISION

JAMES J. GRAHAM, Respondent, v. GIVAUDAN FLAVORS CORPORATION, Appellant.	))))))))))	ED113318 Filed: April 7, 2026

Appeal from the Circuit Court of Marion County
The Honorable Rachel Bringer Shepherd, Judge

Introduction

Givaudan Flavors Corporation appeals the circuit court's judgment, entered following a jury verdict, awarding James J. Graham compensatory and punitive damages for the injuries he sustained due to his occupational exposure to diacetyl and/or 2,3-pentanedione. Givaudan raises twelve counts of error by the circuit court. Finding no error, this Court affirms the judgment.

Background

Givaudan manufactures chemical flavoring products and sells them to food production companies. These flavoring products contain diacetyl and/or 2,3-

pentanedione. General Mills purchases Givaudan's chemical flavorings to use in its products.

From August 2005 through February 2011, Graham worked in the General Mills food manufacturing plant in Hannibal, Missouri. During that time, General Mills purchased seventeen Givaudan flavors that contained diacetyl and/or 2,3-pentanedione.

In July 2020, Graham filed suit against Givaudan and other defendants, alleging his exposure to diacetyl and/or 2,3-pentanedione caused him to contract bronchiolitis obliterans, a permanent and progressive lung disease. Graham alleged the disease halved his lung capacity, which causes him to gasp for air and prevents him engaging in activities he previously enjoyed.

The jury awarded Graham $2,000,000 in compensatory damages and assessed punitive damages against Givaudan at $56,631,960. Pursuant to section 537.060, RSMo 2016, the circuit court reduced the amount of compensatory damages by the payments Graham received from other defendants who settled prior to trial. The circuit court entered judgment awarding Graham $1,529,500 in compensatory damages, $56,631,960 in punitive damages, and post-judgment interest. Givaudan appeals.

Expert Testimony

Section 490.065.2(1), RSMo Supp. 2017, governs the admissibility of expert witnesses. Section 490.065.2 states:

> (1) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

> (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
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> (b) The testimony is based on sufficient facts or data;
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> (c) The testimony is the product of reliable principles and methods; and
>
> (d) The expert has reliably applied the principles and methods to the facts of the case ….

The circuit court's decision regarding the admission of expert testimony is reviewed for an abuse of discretion. *Linton by & through Linton v. Carter*, 634 S.W.3d 623, 626-27 (Mo. banc 2021). "If reasonable persons can differ as to the propriety of the [circuit] court's action, then it cannot be said that the [circuit] court abused its discretion." *Id*. at 627 (quoting *In re Care & Treatment of Donaldson*, 214 S.W.3d 331, 334 (Mo. banc 2007)).

Dr. Adam Finkel

Dr. Adam Finkel testified on behalf of Graham. He holds a doctorate in environmental health sciences from Harvard's School of Public Health. Dr. Finkel currently is a professor at the University of Michigan, School of Public Health. He has decades of working experience in epidemiology, toxicology, and risk assessment. Dr. Finkel also has specific experience with bronchiolitis obliterans.

Dr. Finkel testified that he investigated the toxicity of diacetyl and 2,3-pentanedione and the concentration of those chemicals in Givaudan's products. Dr. Finkel explained basic industrial hygiene principles, which include substituting or eliminating dangerous chemicals. Dr. Finkel also examined Graham's workplace

exposure to Givaudan's flavorings at General Mills and concluded the concentration levels could cause bronchiolitis obliterans.

Givaudan challenges the reliability of some of Dr. Finkel's testimony and his qualifications to give other portions of testimony. First, Givaudan argues Dr. Finkel's opinions on general causation and Graham's exposure to the toxic ingredients were unreliable. Next, it argues that Finkel was not qualified to testify regarding the standard of care. Givaudan's argument regarding the reliability of Dr. Finkel's testimony is based on Givaudan's belief that Dr. Finkel did not reliably determine Graham's level of exposure to Givaudan's flavorings at the General Mills plant.

Section 490.065.2(2) allows experts to base their opinions on "facts or data" they are "aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted." Dr. Finkel's testimony was based on reliable facts and data that are reasonably relied upon by experts in the field. Dr. Finkel investigated how Graham was exposed to diacetyl and 2,3-pentanedione. It was clear that Givaudan supplied approximately 179,900 pounds of flavoring with diacetyl and 2,3-pentanedione to his workplace. Workers displayed symptoms of coughing and headaches, and their clothes smelled of flavoring at the end of the day. Workplace areas were coated in flavoring dust. Givaudan issued a 2008 Material Safety Data Sheet, warning individuals to not "breathe dust" from the flavorings because they "cause damage to organs if inhaled." Dr. Finkel compared those conditions to published literature documenting the same lung injuries at a similar exposure level. Additionally, Dr. Finkel

confirmed the toxicity of diacetyl and 2,3-pentanedione by examining animal studies, in vitro data, epidemiological evidence, peer-reviewed literature, and the Bradford Hill criteria, a set of criteria used by epidemiologists to evaluate causation.

Dr. Finkel concluded Givaudan's flavorings produced concentrations that were "more than ample" to cause bronchiolitis obliterans. This causation analysis is sufficient because Dr. Finkel "was not required to produce 'a mathematically precise table equating level of exposure with levels of harm.'" *Junk v. Terminix Int'l Co.*, 628 F.3d 439, 448 (8th Cir. 2010) (quoting *Wright v. Willamette Indus., Inc.,* 91 F.3d 1105, 1108 (8th Cir.1996)). Dr. Finkel's opinion followed a reliable methodology based on facts and data reasonably relied upon by experts in the field in forming opinions or inferences upon the subject. "Any alleged weakness in the expert's conclusions goes to the weight of the evidence, and not the admissibility." *Crowder v. Ingram Barge Co., LLC*, 681 S.W.3d 641, 646 (Mo. App. 2023).

Regarding Dr. Finkel's qualifications, Givaudan argues that, although Dr. Finkel may be a qualified toxicologist and epidemiologist, he lacked essential qualifications to testify regarding the design of Givaudan's flavors. Givaudan suggests that Dr. Finkel lacks essential qualifications because he is not a "flavor scientist" and has no experience in "flavor design." This Court, however, does not assess expert qualifications on labels, but instead looks to a witness's "knowledge, skill, experience, training, or education," as instructed by section 490.065.2(1).

A review of the record shows that Graham presented the circuit court with sufficient testimony from Dr. Finkel to demonstrate sufficient expertise in assessing and

regulating toxic materials to testify to the standard of care to be used when incorporating those materials into a product. Most relevantly, Dr. Finkel served as the chief scientist for the Occupational Safety and Health Administration ("OSHA") investigating a bronchiolitis obliterans outbreak in Joplin, Missouri. Moreover, Dr. Finkel has published more than forty peer-reviewed articles, contributed to multiple books, and presented at conferences detailing his work in epidemiology, toxicology, and risk assessment.

Separately, Givaudan failed to identify the offending testimony regarding standard of care in its brief. Although this Court could conceivably review the entirety of the transcript to identify the particular testimony on this issue and then assess Dr. Finkel's qualifications to give it, the Court is under no obligation to do so. Were the Court to engage in this exercise, it would make it an advocate on Givaudan's behalf. That is a role the Court must not assume. *Lexow v. Boeing Co.*, 643 S.W.3d 501, 509 (Mo. banc 2022). As a result, based on the arguments presented, the circuit court did not abuse its discretion by admitting Dr. Finkel's testimony.

Dr. Charles Pue

Dr. Charles Pue testified on Graham's behalf. Dr. Pue is a board-certified pulmonologist who frequently treats patients with bronchiolitis obliterans. Dr. Pue testified that Graham's exposure to diacetyl and 2,3-pentanedione caused or directly contributed to cause Graham's illness. Givaudan claims the circuit court erred by admitting Dr. Pue's testimony because his opinion was not based on sufficient facts or data, rendering it unreliable. Givaudan argues that while Dr. Pue could have concluded

Graham was exposed to flavorings in general, he had insufficient facts or data regarding Graham's exposure to diacetyl and 2,3-pentanedione to properly form an opinion.

Dr. Pue is a pulmonologist who studies and treats lung diseases. To determine the cause of Graham's bronchiolitis obliterans, Dr. Pue conducted a differential diagnosis. "In performing a differential diagnosis, a[n expert] begins by 'ruling in' all scientifically plausible causes of the plaintiff's injury. The [expert] then 'rules out' the least plausible causes of injury until the most likely cause remains." *Glastetter v. Novartis Pharm. Corp.*, 252 F.3d 986, 989 (8th Cir. 2001). Dr. Pue concluded that Graham's exposure to diacetyl and 2,3-pentanedione directly contributed to cause his lung problems.

After conducting a proper differential diagnosis, Dr. Pue's medical opinion about causation is considered reliable and admissible. *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 709 (Mo. App. 2020). Any perceived deficiency in the factual foundation of Dr. Pue's opinion goes to the weight to give his testimony, not its admissibility. *Crowder*, 681 S.W.3d at 646.

Further, Givaudan incorrectly asserts that Dr. Pue's opinion was unreliable because it relied on Dr. Finkel and another expert's information and opinions. "Merely because an expert relied on information and opinions of others does not automatically disqualify his testimony[;] [a]s long as such sources serve only as a background for his opinion and are not offered as independent substantive evidence ... he should not be precluded from testifying." *K.B. v. Oasis Foot Spa & Massage*, *LLC*, 703 S.W.3d 606, 615 (Mo. App. 2024) (quoting *Otwell v. Treasurer of Missouri*, 634 S.W.3d 850, 859 (Mo. App. 2021)). Moreover, Dr. Pue reviewed records showing that Givaudan supplied

products containing the relevant ingredients to the plant where Graham worked during his time of employment.

Dr. Pue had sufficient facts and data on which to rely in performing his differential diagnosis. The circuit court did not abuse its discretion by admitting Dr. Pue's testimony.

Admission of Evidence

"The admission or exclusion of evidence lies within the sound discretion of the [circuit] court and will not be disturbed absent clear abuse of discretion." *Sherrer v. Bos. Sci. Corp.*, 609 S.W.3d 697, 705 (Mo. banc 2020) (quoting *Cox v. Kan. City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 114 (Mo. banc 2015)). The admission or exclusion of evidence "constitutes an abuse of discretion when it is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." *Kappel v. Prater*, 599 S.W.3d 189, 192 (Mo. banc 2020) (quoting *Cox*, 473 S.W.3d at 114). This Court will not reverse the circuit court's judgment even if it abused its discretion unless the error "materially affected the merits of the action." *Id.*; Rule 84.13(b).

Non-Party Flavors at the Plant

Givaudan claims the circuit court erred by excluding all evidence of non-party chemical flavorings present at the General Mills' manufacturing plant. Givaudan argues this evidence was admissible to disprove causation.

Givaudan's claim is premised on the incorrect assertion that the circuit court excluded all evidence of non-party fault. The circuit court allowed evidence that approximately ten million pounds of chemical flavorings were used at the General Mills'

manufacturing plant. There was evidence that Givaudan supplied only about two percent of those flavorings. There also was evidence that Givaudan was not the only supplier who provided products containing diacetyl and 2,3-pentanedione. The record refutes Givaudan's claim because it shows the circuit court admitted evidence showing Givaudan provided a small percentage of the chemical flavorings used at the General Mills manufacturing plant. The circuit court did not abuse its discretion.

Cigarette Smoke

Givaudan claims the circuit court erred by excluding evidence that cigarette smoke contains diacetyl and 2,3-pentanedione. Givaudan argues that the circuit court should have allowed two of its experts to testify that even though these chemicals are present in cigarette smoke, there are no reported cases of bronchiolitis obliterans in smokers. Givaudan argues the circuit court should have admitted this evidence because it tended to disprove causation.

Prior to trial, Graham filed a motion in limine to exclude evidence, argument, or references to the presence of diacetyl in cigarette smoke. The circuit court sustained Graham's motion in limine. At trial, Givaudan presented offers of proof from each of its experts, seeking to admit evidence that diacetyl is present in cigarette smoke but smokers do not suffer from bronchiolitis obliterans.

Evidence must be logically and legally relevant to be admissible at trial. *Midwest Tr. Co. v. United Parcel Serv., Inc.*, 717 S.W.3d 307, 312 (Mo. App. 2025). However, this Court reviews the exclusion of evidence for an abuse of discretion, not whether the evidence was admissible. *Rhoden v. Missouri Delta Med. Ctr.*, 621 S.W.3d 469, 484 (Mo.

banc 2021). The exclusion of evidence "is warranted only when the evidence creates a danger of unfair prejudice, confusion of the issues, or misleading the jury that substantially outweighs the probative value of the evidence." *Ingham*, 608 S.W.3d at 704.

Givaudan relied on three studies regarding the causal relationship between smoking and bronchiolitis obliterans. One study investigated the diacetyl and 2,3-pentanedione content in three unnamed brands of cigarettes purchased in 2014. The study did not establish whether all cigarette brands contained the same chemical compounds or whether the cigarettes during the relevant period of time were the same. Further, this study acknowledged there was no published information comparing the absorbed dose of diacetyl and 2,3-pentanedione from cigarette inhalation with that of absorption from occupational exposure. Neither of the two additional studies meant to assess whether there was any causal relationship between cigarette smoking and bronchiolitis obliterans. Rather, one study focused on chronic obstructive pulmonary disease and the other compared histological features of young and old smokers. These studies offer little in the way of probative evidence, while encouraging significant additional evidence on the issue of whether cigarette smoking causes bronchiolitis obliterans.

Additionally, the risk of confusion of the jury was quite clear. Givaudan's argument oscillates between suggesting the circuit court erred because the studies show that the relevant ingredients do not cause bronchiolitis obliterans and that the court erred because the exclusion of the evidence denied the jury information regarding another possible cause of Graham's injury. That is to say, Givaudan argues that the studies show either that the ingredients do not cause bronchiolitis obliterans or that cigarette smoke

provides an alternative source of the chemicals that caused Graham's illness. Being as Givaudan seems confused by its own experts' testimony, it is unclear how a jury would fare better.

The circuit court did not abuse its discretion by excluding evidence that cigarette smoking did not cause bronchiolitis obliterans.

Evidence of Other Workers' Respiratory Injuries

Givaudan claims the circuit court erred by admitting evidence of respiratory injuries to workers at other food manufacturing plants because those injuries were irrelevant to Graham's injuries. Givaudan argues the other injuries did not occur under substantially similar circumstances.

The circuit court has discretion to admit prior similar incidents when the evidence is "of like character that occurred under substantially the same circumstances and resulted from the same cause." *Lopez v. Three Rivers Elec. Co-op., Inc.*, 26 S.W.3d 151, 159 (Mo. banc 2000). "Evidence of prior occurrences similar to the one that injured plaintiff may be admissible to establish notice to the defendant of the existence of a dangerous condition." *Emery v. Wal-Mart Stores, Inc.*, 976 S.W.2d 439, 446 (Mo. banc 1998). "The degree of similarity required for evidence being used to show defendant's notice of prior similar incidents is less demanding than the degree of similarity required for a series of prior incidents being used to show the same incident occurred on the date at issue." *Id*.

Graham admitted evidence demonstrating that in the 1990s, Givaudan became aware diacetyl exposure was linked to the development of bronchiolitis obliterans at other food manufacturing plants where it supplied flavorings containing diacetyl. Like

Graham's case, these incidents involved employees working at a manufacturing plant while being exposed to diacetyl. Further, these reports indicated the injuries were not isolated, but rather there were an increasing number of employees developing bronchiolitis obliterans. These reports further indicated that Givaudan was investigating possible causes of the employees' illnesses, noting that, "Diacetyl still appears to be a viable candidate as a possible etiologic agent." The circuit court did not err in admitting evidence demonstrating Givaudan knew there were other individuals with occupational exposure to its products containing diacetyl who developed bronchiolitis obliterans.

Preservation of Error

Submissibility

Givaudan claims the circuit court erred by overruling its motion for judgment notwithstanding the verdict because Graham failed to make a submissible case. Givaudan argues there was no proof of a design defect, causation, and the applicable standard of care.

"Central to the formation of a brief are an appellant's points relied on." *Lexow*, 643 S.W.3d at 505. Each point on appeal must: (1) identify the challenged ruling; (2) concisely state the legal reasons claiming reversible error; and (3) explain "why, in the context of the case, those legal reasons support the claim of reversible error." Rule 84.04(d)(1). "A noncompliant point relied on that fails to meet these essential purposes impedes the adversarial process and, by extension, this Court's impartial review of a specific claim of reversible error." *City of Harrisonville v. Missouri Dep't of Nat. Res.*, 681 S.W.3d 177, 181 (Mo. banc 2023). Additionally, each point on appeal must only

address a single issue. *Lexow*, 643 S.W.3d at 506 ("Consolidating 'multiple, independent claims' into a point is not permitted.") A noncompliant point on appeal preserves nothing for appeal. *Harrisonville*, 681 S.W.3d at 181.

Givaudan's point on appeal is noncompliant. The point on appeal combines three distinct claims. Givaudan's point on appeal "requires the respondent and appellate court to search the remainder of the brief to discern the appellant's assertion and, beyond causing a waste of resources, risks the appellant's argument being understood or framed in an unintended manner." *Lexow*, 643 S.W.3d at 505. *See also Thummel v. King*, 570 S.W.2d 679, 686 (Mo. banc 1978). "[A]llegations of error … not properly briefed shall not be considered in any civil appeal …" Rule 84.13(a).

Givaudan's submissibility point seems to argue that Graham failed to present evidence that the flavors cause bronchiolitis obliterans, that Graham failed to present evidence that the flavors caused his bronchiolitis, that no expert testified that the flavors were defectively designed, and that no expert testified about the standard of care for product design. Each of these arguments go to different elements and warrant different discussions with their own legal standards. Givaudan shoehorned those arguments into this single point but with the effect of losing coherence on any legal or factual argument. In any event, Graham presented evidence that Givaudan provided a product that it knew contained ingredients capable of causing bronchiolitis obliterans to Graham's workplace and where he was exposed to those chemicals. Taking that evidence in the light most favorable to the verdict, as we must, none of Givaudan's several arguments made in this point, at least as this Court understands them, warrant reversal.

Because Givaudan's point on appeal fails to comply with Rule 84.04(d), it is dismissed.

General Mills' Fault

Givaudan claims the circuit court erred in excluding evidence and argument regarding General Mills' fault. Givaudan argues that this was admissible evidence that tended to disprove causation.

Givaudan raised this claim in its motion in limine and post-trial motion, but failed to make a specific and timely objection at trial. Motions in limine rulings are interlocutory and may be changed during the course of trial. *Rhoden*, 621 S.W.3d at 484. "A motion in limine, by itself, preserves nothing for appeal." *Id.* (quoting *Hancock v. Shook*, 100 S.W.3d 786, 802 (Mo. banc 2003)). "Thus, to properly preserve for appeal the admission of evidence complained of in a motion in limine, the party challenging the evidence must also object at trial." *Oasis Foot Spa & Massage*, 703 S.W.3d at 614 (internal quotations omitted) (quoting *Cottonaro v. Express Med. Transp.*, *Inc.*, 688 S.W.3d 751, 756 (Mo. App. 2024). "The proponent of the excluded evidence bears the burden of making an offer of proof to the [circuit] court indicating: '(1) what the proffered evidence would be; (2) its object and purpose; and (3) all the facts necessary to establish its relevance and admissibility.'" *Eckelkamp v. Eckelkamp*, 609 S.W.3d 499, 505 (Mo. App. 2020) (quoting *Menschik v. Heartland Reg'l Med. Ctr.*, 531 S.W.3d 551, 562 (Mo. App. 2017)). Finally, because this case was tried by a jury, the same claim of error must be reasserted in a post-trial motion. *Hootselle v. Mo. Dep't of Corr.*, 624 S.W.3d 123, 131 (Mo. banc 2021); Rule 78.07(a).

An offer of proof has a dual purpose: (1) it may convince the circuit court to reconsider admitting the rejected evidence; and (2) it preserves the record for this Court, allowing it to understand "the scope and effect of the questions and proposed answers" to determine whether the circuit court's ruling was proper. *State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n*, 344 S.W.3d 178, 185 (Mo. banc 2011) (quoting *Evans v. Wal–Mart Stores, Inc.,* 976 S.W.2d 582, 584 (Mo. App. 1998)). Because there was no offer of proof, this Court is uninformed of the testimony that Givaudan believes would affect its case.

Additionally, Givaudan fails to demonstrate how this exclusion "materially affect[ed] the merits of the action." Rule 84.13(b). Givaudan claims there should have been evidence that General Mills, rather than Givaudan was at fault. And there was. Givaudan acknowledged there was evidence in the record demonstrating that its flavorings were being used unsafely by General Mills. The circuit court did not err.

Punitive Damages

Failure to Make a Submissible Case for Punitive Damages

Givaudan claims the circuit court erred by overruling its motion for judgment notwithstanding the verdict because Graham failed to make a submissible case for punitive damages. Givaudan argues there was no evidence it knew or had reason to know that its conduct would result in injury.

This Court conducts *de novo* review to determine whether there is sufficient evidence to support a punitive damage award. *Schultz v. Great Plains Trucking, Inc.*, 707 S.W.3d 570, 579 (Mo. banc 2025). The evidence and all reasonable inferences are viewed

"in the light most favorable to the jury's verdict." *Id*. (quoting *Rhoden*, 621 S.W.3d at 477). This Court disregards any adverse evidence and inferences. *Id*. "A submissible case for punitive damages requires clear and convincing proof that the defendant intentionally acted 'either by a wanton, willful or outrageous act, or reckless disregard for an act's consequences (from which evil motive is inferred).'" *Rhoden*, 621 S.W.3d at 481 (quoting *Howard v. City of Kan. City*, 332 S.W.3d 772, 788 (Mo. banc 2011)). A plaintiff establishes this standard by demonstrating "the defendant showed a complete indifference to or conscious disregard for the safety of others." *Id*. (quoting *Ingham*, 608 S.W.3d at 714).

Graham introduced evidence that by 1985, Givaudan was aware diacetyl could cause systemic toxicity. By the mid-1990s, Givaudan's predecessor company compiled internal documentation confirming at least seven cases of bronchiolitis obliterans among its employees. This information was not reported to its customers as required by OSHA's Hazard Communication Standard. By 2006, there was compelling scientific evidence linking occupational exposure of diacetyl to bronchiolitis obliterans. Givaudan knew of multiple workers who contracted bronchiolitis obliterans and noted that bronchiolitis obliterans was probably being underdiagnosed. Givaudan set up a news alert system so that it would be informed with the latest information relating to diacetyl. In 2007, Givaudan told its customers that it was "monitoring" issues and regulations and would provide them more details "upon request." However, Givaudan was required legally to provide this information without it being requested. In 2007, General Mills requested Givaudan remove diacetyl. Givaudan replaced diacetyl with 2,3-pentanedione. A 2009

NIOSH study warned that 2,3-pentanedione might be more toxic than diacetyl. Givaudan did not place warning labels on its products until 2019.

Viewed in the light most favorable to the verdict, this evidence was sufficient for the jury to find that Givaudan continued marketing diacetyl and 2,3-pentanedione for years after knowing these chemicals are toxic and caused injury to food plant workers. Thus, the jury could reasonably conclude Givaudan intentionally disregarded worker safety in pursuit of profit by continuing to sell these chemicals with knowledge they would cause injury. The circuit court did not err in finding Graham made a submissible case for punitive damages.

Excessive punitive damages

Givaudan claims the circuit court's punitive damage award was so excessive that it violated due process. Givaudan argues the facts do not demonstrate it committed any reprehensible conduct and the punitive-to-compensatory damages ratio was too large.

"No precise constitutional line or simple mathematical formula exists with regard to determining whether a punitive damage award is grossly excessive." *Blanks v. Fluor Corp.*, 450 S.W.3d 308, 410 (Mo. App. 2014) (quoting *Peel v. Credit Acceptance Corp.*, 408 S.W.3d 191, 211 (Mo. App. 2013)).

> When faced with a claim that a punitive damages award violates due process, a court must consider three guideposts: (1) the degree of the reprehensibility of the defendant's conduct; (2) the ratio between the harm the defendant inflicted—measured in actual damages—and the punitive damages award; and (3) a comparison of the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct.

All Star Awards & Ad Specialties, Inc. v. HALO Branded Sols., Inc., 642 S.W.3d 281, 296 (Mo. banc 2022).

The first guidepost, the degree of reprehensibility of the defendant's conduct, is the most important factor. *Id.* "This principle reflects the accepted view that some wrongs are more blameworthy than others." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575, 116 S. Ct. 1589, 134 L.Ed.2d 809 (1996). To determine a defendant's reprehensibility, courts determine whether:

> the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 419, 123 S. Ct. 1513, 1521, 155 L. Ed. 2d 585 (2003).

There is ample evidence that Givaudan's conduct was reprehensible. There was evidence Givaudan exhibited a conscious disregard for the health and safety of every individual who came into contact with its products. There was evidence Givaudan was unwilling to modify its business practice even though it knew individuals were suffering. There was evidence Givaudan knew bronchiolitis obliterans is often misdiagnosed and its effects are incurable, but it failed to take any corrective action for decades.

The degree of reprehensibility is further illustrated by Graham's injuries. Bronchiolitis obliterans is a serious, irreversible lung condition. There was evidence that Givaudan knew the harm diacetyl and 2,3-pentanedione caused. The evidence supports

an inference Givaudan intentionally increased the harm to individuals working with its chemical flavorings by concealing pertinent facts and information.

The second guidepost involves comparing the ratio between the actual damages and punitive damages awarded. *All Star Awards*, 642 S.W.3d at 296. Givaudan argues that no more than a one-to-one ratio should be imposed because Graham received substantial compensatory damages, this was not a latent injury, Graham's condition is stable, and the company's high net worth is irrelevant. Each of these assertions is incorrect.

The jury awarded Graham a significant amount of compensatory damages because it found his injuries were serious. The seriousness of Graham's injuries does not mitigate Givaudan's liability for punitive damages. Moreover, Givaudan effectively concedes the compensatory damages were not excessive by not challenging the compensatory damage amount on appeal. This concession is consistent with the fact recent cases show Graham's $1,529,500 compensatory damages award is unremarkable given the extent of his injuries. *See Anderson v. Monsanto Co.*, 719 S.W.3d 755, 764 (Mo. App. 2025) (affirming compensatory damage awards for four plaintiffs on claims of strict liability-design defect, strict liability-failure to warn, and negligence for $38 million, $5.6 million, $100,000, and $17.5 million); *Schultz*, 707 S.W.3d at 575 (affirming $10 million compensatory damage award in a wrongful death action); *Church v. CNH Indus. Am., LLC*, 671 S.W.3d 829, 836 (Mo. App. 2023) (affirming $3 million compensatory damage award); *Norman v. Progressive Preferred Ins. Co.*, 646 S.W.3d 440, 441 (Mo. App. 2022) (affirming $6 million compensatory damages in wrongful death case); *Ingham*, 608

S.W.3d at 722 (entering a compensatory damage award of $500 million in actual damages for twenty plaintiffs and $125 million in actual damages for five plaintiffs); *Barron v. Abbott Lab'ys, Inc.*, 529 S.W.3d 795, 797 (Mo. banc 2017) (affirming $15 million in compensatory damages on plaintiff's failure-to-warn claim); *Stewart v. Partamian*, 465 S.W.3d 51, 53–54 (Mo. banc 2015) (affirming $4.3 million to plaintiff for medical negligence); *Lindquist v. Scott Radiological Grp., Inc.*, 168 S.W.3d 635, 656 (Mo. App. 2005) (reinstating a jury verdict for $3.75 million and remanding for a new trial on past economic damages for personal injuries resulting from medical negligence). In many ways, it is fair to say that the compensatory damages are not substantial given the serious impact the injury has had on Graham's life. Any assessment of a compensatory to punitive damage ratio, including whether damages are "substantial," must be made in context.

Givaudan also argues punitive damages should be reduced because bronchiolitis obliterans is not a latent disease. While there may be some circumstances in which an injury's latency is relevant to a punitive damage award amount, this is not that case. The record shows Graham's bronchiolitis obliterans was misdiagnosed and progressively impairs his ability to function. He has less than half of his lung function; he struggles to breathe and gasps for air. He is unable to fully care for himself. He is unable to participate in activities that he used to enjoy. He is unable to hold another full-time job, walk long distances, or lift heavy objects. He has constant chest pain. It is within a jury's discretion to determine that "the usual single-digit ratio may not be an appropriate measure of the limits of due process" when an egregious act was committed, which

resulted in a relatively low amount of economic damages. *Lewellen v. Franklin*, 441 S.W.3d 136, 148 (Mo. banc 2014) (quoting *Est. of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 374 (Mo. banc 2012)). On this record, the seriousness of Graham's injuries, and his compensation for them, does not mitigate Givaudan's punitive damage liability.

Finally, Givaudan argues its net worth is irrelevant to its punitive damage liability. That is incorrect. Givaudan's net worth is a valid consideration. "The threat of a punitive damages award needs to be great enough to dissuade a company from engaging in wrongdoing; it needs to be substantial enough to create a negative value proposition for the company." *Poage v. Crane Co.*, 523 S.W.3d 496, 524 (Mo. App. 2017). Givaudan's net worth exceeds one billion dollars. A larger punitive damage award for a high net worth company furthers the "State's legitimate interests in punishing wrongful conduct and deterring its repetition." *Scott v. Blue Springs Ford Sales, Inc.*, 176 S.W.3d 140, 144 (Mo. banc 2005) (Teitelman, Judge, concurring); s*ee also Poage*, 523 S.W.3d at 524 (finding imposing a high ratio punitive damage award supports the State's interest of "deterring companies from putting unreasonably dangerous products into our State's stream of commerce"). It is self-evident that the financial disincentive provided by a punitive damage award is, in part, a function of the defendant's net worth. Givaudan's net worth is a relevant consideration in awarding punitive damages to disincentivize further tortious conduct.

The third guidepost involves comparing the punitive damages award and potential civil or criminal penalties. *All Star Awards*, 642 S.W.3d at 296. This is the least

persuasive factor because "violations of common law tort duties often do not lend themselves to a comparison with statutory penalties." *Ingham*, 608 S.W.3d at 723 (quotation omitted).

While Givaudan was not Graham's employer, OSHA currently is authorized to impose a $16,550 daily penalty for an employer who fails to correct a serious workplace violation. 29 C.F.R. § 1903.15(d)(4). Givaudan was aware in the 1980s that its products' chemical composition harmed those who used them. Givaudan hid its findings and took no corrective action. Under these circumstances, the high punitive damage ratio did not violate due process.

Excessive errors

Givaudan claims the circuit court erred by entering an excessive punitive damage award because the circuit court committed numerous errors of law and fact during the trial. Givaudan argues that because the circuit court committed numerous errors, the jury was prejudiced. This argument fails because this Court has not found that the circuit court committed trial error. Because the allegations of error were not meritorious, "they cannot serve as a predicate for a finding of excessiveness of the verdict." *Giddens v. Kansas City S. Ry. Co.*, 29 S.W.3d 813, 822 (Mo. banc 2000).

Punitive Damages Cap

Givaudan claims the circuit court erred by failing to apply the punitive damages cap pursuant to section 510.265, RSMo Supp. 2020. The "punitive damages cap in section 510.265 'curtails the jury's determination of damages and, as a result, necessarily infringes on the right to a trial by jury when applied to a cause of action to which the

right to jury trial attaches at common law.'" *Lewellen*, 441 S.W.3d at 145 (quoting *Watts v. Lester E. Cox Med. Centers*, 376 S.W.3d 633, 640 (Mo. banc 2012)). The punitive damages cap violates the constitutional right to a jury trial under article I, section 22(a) of the Missouri Constitution, if the legal cause of action existed or was analogous to a claim existing in 1820. *All Star Awards*, 642 S.W.3d at 287. If the cause of action or the analogous claim "was cognizable in 1820 but did not support the assessment of punitive damages in 1820, then article I, section 22(a) does not ensure a modern litigant the right to a jury's determination of unlimited damages on that claim and" section 510.265's limitation may apply. *Id*.

Against this backdrop, Givaudan argues that the circuit court should have applied section 510.265 to limit the punitive damage award because there was no analogous right of recovery in 1820. Givaudan contends that in 1820, a plaintiff like Graham would not have had a cause of action against a third-party supplier because there was no privity of contract between them. This is incorrect.

> It is well settled that a man who delivers an article, which he knows to be dangerous or noxious, to another person, without notice of its nature and qualities is liable for any injury which may reasonably be contemplated as likely to result, and which does in fact result, therefrom, to that person or any other, who is not himself in fault.

Heizer v. Kingsland & Douglass Mfg. Co., 19 S.W. 630, 633 (Mo. 1892) (quoting *Wellington v. Downer Kerosene Oil Co.*, 104 Mass. 64, 67 (1870)). *See also Huset v. J. I. Case Threshing Mach. Co.*, 120 F. 865, 870–81 (8th Cir. 1903) (describing examples of three categories of exceptions to this general rule). The evidence in this case showed that Givaudan knew its products caused bronchiolitis obliterans in factory employees where

its chemical flavorings were used. The evidence also showed Givaudan knew its products could be dangerous, concealed this information, and people were harmed. These actions fall within the exception to the general rule of privity for actions relating to the delivery of a "dangerous or noxious" article to another who is without fault and lacks knowledge of the danger. *Heizer*, 19 S.W. at 633. Privity of contract is not required in this case, and Givaudan would have been liable for the injuries to others.

Because Graham's claims were analogous to claims cognizable in 1820, the circuit court properly refused to apply section 510.265 and committed no error.

Post-Judgment Interest

Givaudan claims the circuit court erred by awarding post-judgment interest on the entire judgment. Givaudan argues that Graham is not entitled to post-judgment interest on the portion of the judgment for punitive damages payable to the State.

Section 408.040, RSMo 2016, governs interest on judgments. *See also Church v. CNH Indus. Am., LLC*, 671 S.W.3d 829, 845 (Mo. App. 2023). "Judgments shall accrue interest on the judgment balance …." Section 408.040.1. "The 'judgment balance' is defined as the total amount of the judgment awarded on the day the judgment is entered including, but not limited to, principal, prejudgment interest, and all costs and fees." *Id*. On the day the judgment in this case was entered, the circuit court awarded Graham $1,529,500 in compensatory damages and $56,631,960 in punitive damages against Givaudan. Therefore, the "judgment balance" in this case included the full $56,631,960 punitive damage award. The circuit court complied with the section 408.040.1's plain language by awarding post-judgment interest on the full judgment balance in this case.

Givaudan argues the fact the State may obtain a lien on the punitive damage award precludes awarding post-judgment interest on that portion of the judgment. Section 537.675.3, RSMo 2016, provides "The state can file its lien [for deposit into the tort victims' compensation fund] in all cases where punitive damages are awarded upon the entry of the judgment final for purposes of appeal." The fact the State can assert an interest in the judgment balance owed by Givaudan does not reduce the judgment balance. Rather, some of the punitive damages award of the judgment balance owed by Givaudan is directed to the State. The post-judgment lien authorized by section 537.675 does not alter the judgment balance from which post-judgment interest is calculated pursuant to section 408.040.1. The circuit court did not err by awarding post-judgment interest on the entire judgment balance.

Conclusion

The circuit court's judgment is affirmed.

John P. Torbitzky, Chief Judge

James M. Dowd, Judge and
Lisa P. Page, Judge, concur.