



# **Bailets v. Pennsylvania Turnpike Commission – Pennsylvania Supreme Court Strengthens Pennsylvania's Whistleblower Law for Whistleblower Plaintiffs**

Insights

4.16.18

The Pennsylvania Supreme Court (the “Supreme Court”) has taken the “whistleblowers be made whole” purpose of the Pennsylvania Whistleblower Law, 43 P.S. §§1421-1428, (the “PAWL”) to the next level in its March 27, 2018 decision in Bailets v. Pennsylvania Turnpike Commission, No. 126-2016, \_\_\_ A.3d \_\_\_, 2018 WL 1516785 (Pa. 2018).

In an issue of first impression in Pennsylvania, the Supreme Court found that non-economic damages for items such as embarrassment, humiliation, loss of reputation, and mental anguish are available to successful plaintiffs under the PAWL. Even more, the Supreme Court found that a \$1.6 million award for the plaintiff’s non-economic damages was not excessive. The Bailets opinion emphasizes the PAWL’s remedial purpose of protecting employees who inform authorities of wrongdoing and putting the employee “in no worse a position for having exposed the wrongdoing.”

## **Case Background**

The Pennsylvania Turnpike Commission (“PTC”) terminated the employment of plaintiff Ralph M. Bailets, former Manager of Financial Systems and Reporting, after Bailets worked there for ten years. Bailets’ primary job responsibility was to ensure PTC’s financial reports were produced accurately and in a timely fashion. In reviewing submissions in response to requests for proposals, Bailets voiced concerns to his immediate supervisor that one of the bidders for the contract, Ciber, Inc. (“Ciber”), had an unfair advantage over the other bidders. Despite having submitted the highest bid, Ciber was awarded the \$53.8 million contract.

After Ciber received the substantial contract, Bailets reported to his manager Ciber’s significant poor performance issues. Bailets also reported the issues to his colleague, Nikolaus H. Grieshaber, who acknowledged that Ciber was “politically connected within the PTC hierarchy, and warned Bailets to tread lightly in his complaints about Ciber.” Shortly after making these statements, Grieshaber became PTC’s Chief Financial Officer and almost immediately sent the COO an email stating he has “a lot of misgivings about” Bailets and that PTC needed to “keep a short leash on him.” Ciber was awarded another substantial contract and Bailets continued to complain regarding Ciber’s deficiencies. PTC terminated Bailets’ employment (along with fourteen other employees) citing to elimination of his position due to budgetary reasons. Bailets was immediately escorted from the building with his belongings in hand.

## **Legal Analysis**

Bailets filed a complaint in the Commonwealth Court (the “trial court”), alleging a single claim of retaliation under the PAWL. The trial court granted PTC’s motion for summary judgment. Bailets appealed and the case was remanded back to the trial court for further proceedings, noting that Bailets’ complaint clearly presented prima facie evidence of violations of the PAWL. After a four-day bench trial, the trial court found that Bailets’ termination violated the PAWL and awarded Bailets \$1.6 million in economic damages and \$1.6 million in non-economic damages, for a total of \$3.2 million. Adhering to the “no worse a position” theory, the trial court concluded that “[w]ithout compensation for harm to his reputation, humiliation and mental anguish, Bailets would be in a far worse position for having reported the wrongdoing.” The trial court also highlighted that other jurisdictions with similar whistleblower protection law have determined that non-economic damages are recoverable.

PTC appealed and the Supreme Court was faced with answering two questions: (1) whether noneconomic damages are recoverable under the PAWL; and (2) whether the \$1.6 million noneconomic damages award was excessive.

With respect to the first issue, the Supreme Court analyzed the statutory meaning of “actual damages” in section 1425 of the PAWL. After reviewing the arguments from both parties, the Supreme Court determined:

Given the overriding purpose of the [PAWL] and our determination a whistleblower must be put in no worse a position for having reported the wrongdoing, we cannot view the phrase ‘actual damages’ as excluding damages for such items of loss as humiliation, embarrassment and mental anguish because if no recovery for such items of loss are available, a whistleblower cannot be made whole. Similarly, in viewing the consequences of a particular interpretation, any construction which limits the phrase ‘actual damages’ to economic losses leaves whistleblowers uncompensated for any non-economic harms they might suffer as a result of their decision to expose the wrongdoing of their employers, harms which lie completely outside such items as loss of pay and benefits.

With this significant holding, the Supreme Court then moved to the second question of whether the trial court’s \$1.6 million award of noneconomic damages was excessive. Among PTC’s arguments, PTC argued that the trial court awarded Bailets such a high award of noneconomic damages as a way of getting around the fact that punitive damages are not available under the PAWL, citing to a footnote in the trial court’s opinion, and that Bailets did not present any medical evidence. The Supreme Court was not convinced by these arguments. The Supreme Court noted that PTC “clearly minimizes the level, duration and extent of Bailets’ non-economic injuries.” With respect to PTC’s argument that Bailets’ “emotional state mirrored those of any person who might find himself unemployed,” the Supreme Court took the opportunity to reiterate the wrongdoing that PTC engaged in and noted that PTC “quite misses the point that Bailets became unemployed as a result of PTC’s intentional retaliation against him for exposing wrongdoing, a turn of events about which Bailets ruminates endlessly, wondering whether he had done the right thing given his resulting dire

financial predicament and its impact on his family.” The Supreme Court concluded that the trial court made a “legitimate inference from the evidence presented at trial.”

### **Takeaways for Employers**

The Bailets decision is a clear victory for whistleblower plaintiffs. Assessing damages for a PAWL claim are no longer easily quantified (e.g., back pay, front pay, fringe benefits, etc.) and the affordance of noneconomic damages makes it quite hard for an employer to ballpark its exposure. Moreover, these cases can be drawn out (almost ten years since the case was filed), and, as such, an attorney’s fees award, which is permitted by the PAWL, can be quite steep.

If you have questions about whistleblower claims, please consult your Fisher Phillips attorney.