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HEADLINE: Legal advice: No shield for punitives

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BODY:

Is following the advice of counsel enough to shield employers from punitive damages when they fire someone?

Is listening to a lawyer enough to show good faith?

Not necessarily, a state appeals court has ruled.

In Kluczyk v. Tropicana Products, Inc. -- a decision that also affirmed counsel fees of more than \$ 300,000 for the employee's lawyer -- Judge Edwin H. Stern flatly rejected the contention that punitive damages never can be awarded when firing a worker based on a lawyer's advice.

"The advice of counsel is only one factor, not a per se basis, for assessing or deciding whether the termination was in good faith," Stern wrote.

Besides, he said, the case before the court also presented a factual question of whether the employer's action truly was based on counsel's advice or was instead an independent decision to retaliate against the worker.

Stern added that when there is a claim that an employer was merely acting on a lawyer's recommendation, "evidence relating to the advice of counsel may be admissible and considered by the jury in reaching its verdict of punitive damages."

Andrew W. Dwyer of Newark, who represented the employee, said if the court had accepted the idea that there could be no punitive damages under the circumstances, it would mean conduct would be immunized whenever you "run it by the legal department."

He also noted a lawyer could give advice "not to comply with the law" but to circumvent it and there still would be no punitive damages.

The worker, Tadeusz Kluczyk, alleged his employer, Tropicana Products,

