

PUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1019

JOYCE MCKIVER; DELOIS LEWIS; DAPHNE MCKOY; ALEXANDRIA MCKOY; ANTONIO KEVIN MCKOY; ARCHIE WRIGHT, JR.; TAMMY LLOYD; DEBORAH JOHNSON; ETHEL DAVIS; PRISCILLA DUNHAM,

Plaintiffs - Appellees,

and

DENNIS MCKIVER, JR.; LAJUNE JESSUP; DON LLOYD, Administrator of the Estate of Fred Lloyd; TERESA LLOYD; TANECHIA LLOYD; CARL LEWIS; ANNETTE MCKIVER; KAREN MCKIVER; BRIONNA MCKIVER; EDWARD OWENS; DAISY LLOYD; A. (DAUGHTER); A. (SON),

Plaintiffs,

v.

MURPHY-BROWN, LLC, d/b/a Smithfield Hog Production Division,

Defendant – Appellant.

AMERICAN FARM BUREAU FEDERATION; NATIONAL PORK PRODUCERS COUNCIL; NORTH CAROLINA FARM BUREAU FEDERATION; NORTH CAROLINA PORK COUNCIL; NORTH AMERICAN MEAT INSTITUTE; NATIONAL ASSOCIATION OF MANUFACTURERS; GROCERY MANUFACTURERS ASSOCIATION; CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; NATIONAL TURKEY FEDERATION; NATIONAL CHICKEN COUNCIL; JOEY D. CARTER; JOEY CARTER FARMS; WILLIAM R. KINLAW; KINLAW FARMS, LLC; PAUL STANLEY; PAGLE CORP.; GREENWOOD LIVESTOCK, LLC,

Amici Supporting Appellant.

LAW PROFESSORS WITH EXPERTISE IN TORT AND REGULATORY LAW; AMERICAN ASSOCIATION FOR JUSTICE; NORTH CAROLINA JUSTICE CENTER; HUMANE SOCIETY OF THE UNITED STATES; PUBLIC JUSTICE, P.C.; FOOD & WATER WATCH; WATERKEEPER ALLIANCE, INC.; NORTH CAROLINA ENVIRONMENTAL JUSTICE NETWORK; RURAL EMPOWERMENT ASSOCIATION FOR COMMUNITY HELP; DR. LAWRENCE CAHOON; ELIZABETH CHRISTENSON; DR. BRETT DOHERTY; MIKE DOLAN FLISS; DR. JILL JOHNSTON; BOB MARTIN; DR. SARAH RHODES; DR. ANA MARIA RULE; DR. SACOBY WILSON; DR. COURTNEY WOODS,

Amici Supporting Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. W. Earl Britt, Senior District Judge. (7:14-cv-00180-BR; 5:15-cv-00013.BR)

Argued: January 31, 2020

Decided: November 19, 2020

Before WILKINSON, AGEE and THACKER, Circuit Judges.

Affirmed in part, vacated and remanded in part by published opinion. Judge Thacker wrote the opinion, in which Judge Wilkinson concurred. Judge Wilkinson wrote a concurring opinion. Judge Agee wrote an opinion concurring in part and dissenting in part.

ARGUED: Stuart Alan Raphael, HUNTON ANDREW KURTH, LLP, Washington, D.C., for Appellant. Tillman J. Breckenridge, PIERCE BAINBRIDGE BECK PRICE & HECHT, LLP, Washington, D.C., for Appellee. **ON BRIEF:** Robert M. Tata, Washington, D.C., Trevor S. Cox, Kevin S. Elliker, David M. Parker, HUNTON ANDREWS KURTH LLP, Richmond, Virginia, for Appellant. Mona Lisa Wallace, John Hughes, WALLACE AND GRAHAM, P.A., Salisbury, North Carolina; Tanya Fridland, PIERCE BAINBRIDGE BECK PRICE & HECHT, LLP, Washington, D.C., for Appellees. Michael B. Kimberly, Washington, D.C., Timothy S. Bishop, Brett E. Legner, Jed Glickstein, Chicago, Illinois, Michael B. Kimberly, MAYER BROWN LLP, Washington, D.C.; Ellen Steen, Travis Cushman, AMERICAN FARM BUREAU FEDERATION, Washington, D.C.; Phillip Jacob Parker Jr., NORTH CAROLINA FARM

BUREAU FEDERATION, Raleigh, North Carolina; Michael C. Formica, NATIONAL PORK PRODUCERS COUNCIL, Washington, D.C., for Amici The American Farm Bureau Federation, National Pork Producers Council, North Carolina Farm Bureau Federation, and North Carolina Pork Council. Daryl L. Joseffer, Michael B. Schon, UNITED STATES CHAMBER LITIGATION CENTER, Washington, D.C., for Amicus Chamber of Commerce of the United States of America. Sean Marotta, HOGAN LOVELLS US LLP, Washington, D.C., for Amici Chamber of Commerce of the United States of America, North American Meat Institute, National Association of Manufacturers, Grocery Manufacturers Association, National Turkey Federation, and National Chicken Council. Matthew Nis Leerberg, Kip D. Nelson, Troy D. Shelton, FOX ROTHSCHILD LLP, Raleigh, North Carolina, for Amici Joey D. Carter, Joey Carter Farms, William R. Kinlaw, Kinlaw Farms, LLC, Paul Stanley, Pagle Corp., and Greenwood Livestock, LLC. Steven M. Virgil, WAKE FOREST UNIVERSITY SCHOOL OF LAW, Winston-Salem, North Carolina, for Amici Law Professors with Expertise in Tort and Regulatory Law. Elise Sanguinetti, President, Jeffrey R. White, AMERICAN ASSOCIATION FOR JUSTICE, Washington, D.C.; David Arbogast, ARBOGAST LAW, San Carlos, California, for Amicus American Association for Justice. Elizabeth Haddix, Mark Dorosin, JULIUS L. CHAMBERS CENTER FOR CIVIL RIGHTS, Carrboro, North Carolina, for Amici North Carolina Environmental Justice Network and the Rural Empowerment Association for Community Help. Emily P. Turner, NORTH CAROLINA JUSTICE CENTER, Raleigh, North Carolina; J. Jerome Hartzell, HARTZELL & WHITEMAN, LLP, Raleigh, North Carolina, for Amicus North Carolina Justice Center. Anna Frostic, Laura Fox, Peter Brandt, THE HUMANE SOCIETY OF THE UNITED STATES, Washington, D.C., for Amicus The Humane Society of the United States. Marianne Engelman-Lado, YALE SCHOOL OF FORESTRY & ENVIRONMENTAL STUDIES, New Haven, Connecticut; Peter Hans Lehner, Alexis Andiman, EARTHJUSTICE, New York, New York, for Amici Dr. Lawrence B. Cahoon, Elizabeth Christenson, Dr. Brett Doherty, Mike Dolan Fliss, Dr. Jill Johnston, Bob Martin, Dr. Sarah Rhodes, Dr. Ana María Rule, Dr. Sacoby Wilson, and Dr. Courtney Woods. Tarah Heinzen, FOOD & WATER WATCH, Washington, D.C., for Amicus Food & Water Watch. David S. Muraskin, Jessica L. Culpepper, Kellan Smith, PUBLIC JUSTICE, P.C., Washington, D.C., for Amici Public Justice and Food & Water Watch. Chandra T. Taylor, Blakely Hildebrand, Nick Jimenez, SOUTHERN ENVIRONMENTAL LAW CENTER, Chapel Hill, North Carolina, for Amicus Waterkeeper Alliance.

THACKER, Circuit Judge:

Murphy-Brown, LLC (“Appellant”) challenges a jury verdict against it awarding compensatory and punitive damages to neighbors of its hog production facilities. Those neighbors, residents of rural Bladen County, North Carolina, sought relief under state nuisance law from odors, pests, and noises they attribute to farming practices Appellant implemented at an industrial-scale hog feeding farm. Having heard evidence of those harms and Appellant’s role in creating them, a jury returned a verdict in favor of the neighbors, to the tune of \$75,000 in compensatory damages per plaintiff, along with a total of \$5 million in punitive damages, which was subsequently reduced to \$2.5 million due to North Carolina’s punitive damages cap.

Appellant asserts seven reasons why we should overturn the decision below and grant a new trial. For the reasons detailed below, we affirm the jury’s verdict as to liability for compensatory and punitive damages, but we vacate the award of punitive damages and remand for a rehearing on that issue based on our evidentiary standards.

I.

A.

Appellant is a commercial hog producer, who contracted with third-party “grower” Kinlaw Farms LLC (“Kinlaw Farms”) to operate an industrial hog feeding facility in Bladen County, North Carolina.¹ Appellant is a single-member LLC of a wholly owned

¹ Appellant is a vertically integrated hog producer, which means Appellant farms hogs on an industrial scale by controlling each stage of pork production from the raising and feeding of the livestock to slaughter and packaging for sale. Appellant operates in part
(Continued)

subsidiary of Smithfield Foods, Inc. (“Smithfield”), which is in turn owned by WH Group Limited (“WH Group”), a publicly traded company based in Hong Kong.

Industrial farming operators like Appellant require their contract growers like Kinlaw Farms to comply with specific policies. The controlling industrial farmer issues detailed mandates to its growers in order to ensure consistency across their various contract operations. Appellant imposes standard operating procedures for all of its contract growers. Specifically, Appellant (1) directs grower management procedures; (2) mandates design and construction of operations; (3) can require the use of technological enhancements; (4) can require capital investments; (5) dictates how many of its hogs are to be placed at a given operation; and (6) controls hog waste management systems.

Joyce McKiver, Delois Lewis, Daphne McKoy, Alexandria McKoy, Antonio Kevin McKoy, Archie Wright, Jr., Tammy Lloyd, Deborah Johnson, Ethel Davis, and Priscilla Dunham (collectively, “Appellees”) are North Carolina residents who owned properties near Kinlaw Farms. Appellees are a subset of a number of plaintiffs (“Plaintiffs”) who sued Appellant for alleged nuisances associated with the hog operations at Kinlaw Farms.

The operation at Kinlaw Farms annually maintained nearly 15,000 of Appellant’s hogs. These hogs generated approximately 153,000 pounds of feces and urine daily. Kinlaw Farms housed the hogs in hog sheds that used vents and fans to move fumes from the hogs to the outside of the building. By design, the hog waste in the sheds fell through

by supplying livestock and feed to contractors known as “growers” who house and care for Appellant’s hogs for certain portions of the animals’ life cycle, subject to Appellant’s control.

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