**ANNOTATIONS AND COMMENTS**

1. **The Prison Litigation Reform Act of 1995 (PLRA)**

Pursuant to the PLRA, “[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of Title 18).” 42 U.S.C. § 1997e(e). In the Eleventh Circuit, a prisoner or pretrial detainee who suffers a constitutional violation without more than a *de minimis* physical injury may recover nominal damages, but not compensatory or punitive damages. *See, e.g.*, *Brooks v. Warden*, 800 F.3d 1295, 1307-09 (11th Cir. 2015); *Al-Amin v. Smith*, 637 F.3d 1192, 1195-99 (11th Cir. 2011) (affirming district court’s exclusion at trial of evidence concerning compensatory and punitive damages where there was no evidence plaintiff suffered a physical injury); *cf. Calhoun v. DeTella*, 319 F.3d 936, 940-41 (7th Cir. 2003) (noting the circuit split regarding the application of the PLRA’s bar on damages). The “availability of declaratory or injunctive relief” as determined by the court is not affected by the PLRA. *Boxer X v. Harris*, 437 F.3d 1107, 1111 n.3 (11th Cir. 2006).

Although physical injury must be more than *de minimis* to recover compensatory and punitive damages under the PLRA, the physical injury need not be significant. *Harris v. Garner*, 190 F.3d 1279, 1286-87 (11th Cir. 1999), *vacated*, 197 F.3d 1059 (11th Cir. 1999), *reinstated in pertinent part*, 216 F.3d 970 (11th Cir. 2000) . The Eleventh Circuit has not precisely defined what constitutes *de minimis* physical injury. Case law indicates that a *de minimis* physical injury includes minor cuts and bruises. *Nolin v. Isbell*, 207 F.3d 1253, 1258 n.4 (11th Cir. 2000) (bruises received during an arrest were non-actionable *de minimis* injury); *Harris*, 190 F.3d at 1286 (holding that a forced “dry shave” was a *de minimis* injury); *Siglar v. Hightower*, 112 F.3d 191, 193-94 (5th Cir. 1997) (finding that a sore, bruised ear persisting for three days was *de minimis*). The instruction uses more than minimal injury, rather than more than *de minimis* injury because it is easier for jurors to understand and conveys the same idea.

The damages limitations under the PLRA apply with equal force to claims by convicted prisoners and pretrial detainees. *Goebert v. Lee Cty.*, 510 F.3d 1312, 1322-25 (11th Cir. 2007) (applying PLRA to § 1983 claim by a pretrial detainee). However, the PLRA does not apply to lawsuits brought by individuals who are no longer in custody. *Napier v. Preslicka*, 314 F.3d 528, 531-34 (11th Cir. 2002).

1. **Compensatory Damages**

“[W]hen § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts.” *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 306 (1986); *accord Wright v. Sheppard*, 919 F.2d 665, 669 (11th Cir. 1990). Damages may include monetary losses, such as lost wages, damaged property, and future medical expenses. *Slicker v. Jackson*, 215 F.3d 1225, 1231 (11th Cir. 2000)). Damages also may be awarded based on “physical pain and suffering” and “demonstrated . . . impairment of reputation[] and “personal humiliation.” *Slicker*, 215 F.3d at 1231. The general rule requiring plaintiffs to mitigate damages applies in actions under 42 U.S.C. § 1983. *See, e.g.*, *Murphy v. City of Flagler Beach*, 846 F.2d 1306, 1309-10 (11th Cir. 1988). Accordingly, the instruction provides an optional bracketed charge regarding mitigation of damages.

“[C]ompensatory damages under § 1983 may be awarded only based on actual injuries caused by the defendant and cannot be presumed or based on the abstract value of the constitutional rights that the defendant violated.” *Slicker*, 215 F.3d at 1229 (emphasis omitted). Consequently, when a plaintiff does not provide any “proof of a specific, actual injury caused by” the defendant’s conduct, the plaintiff is not entitled to compensatory damages. *Kelly v. Curtis*, 21 F.3d 1544, 1557 (11th Cir. 1994).

1. **Nominal Damages**

The instruction reflects the three situations identified in *Slicker*, a non-PLRA case,where an award of nominal damages is appropriate. *Slicker*, 215 F.3d at 1232.

In cases that are not subject to the PLRA, an award of nominal damages may be sufficient to justify an award of punitive damages in a § 1983 action. *Amnesty Int’l, USA v. Battle*, 559 F.3d 1170, 1177-78 & n.3 (11th Cir. 2009) (noting that if plaintiff organization is successful on its claim of a First Amendment violation permitting nominal damages, then “punitive damages may be available” as well); *Davis v. Locke*, 936 F.2d 1208, 1214 (11th Cir. 1991) (affirming award of punitive damages even though jury awarded plaintiff nominal damages but not compensatory damages).

1. **Punitive Damages**

In order to receive punitive damages in § 1983 actions, a plaintiff must show that the defendant’s conduct was “motivated by evil motive or intent” or involved “reckless or callous indifference to the federally protected rights of others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983). Punitive damages in § 1983 claims are not recoverable against government entities. *Young Apartments, Inc. v. Town of Jupiter, Fla.*, 529 F.3d 1027, 1047 (11th Cir. 2008). In a case brought against both individuals and government entities, the instructions should expressly state that punitive damages may be assessed only against the individual defendants for their respective conduct.