

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 725

By: Smith

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Section 721, which relates to foreign judgments; modifying requirements for filing certain judgments for specified purpose; modifying requirements related to certain offers; amending 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2002, Section 9.1), which relates to punitive damages; modifying requirements for certain findings; amending 30 O.S. 2001, Sections 4-201 and 4-303, which relate to guardian's bond and settlement of accounts; modifying requirement for certain finding by court; modifying requirements for filing of certain report; repealing 12 O.S. 2001, Section 1101.1, as amended by Section 7, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 1101.1), which relates to offers of judgment; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 721, is amended to read as follows:

Section 721. A copy of any foreign judgment authenticated in accordance with the applicable Act of Congress or of the statutes of this state may be filed in the office of the court clerk of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until ~~a certified copy of the judgment so~~

~~filed is also filed in the office of the county clerk in the county where the real estate is located~~ the judgment creditor complies with the requirements of subsection B of Section 706 of this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1101.1A of Title 12, unless there is created a duplication in numbering, reads as follows:

A. SERVICE OF OFFER; TIME FOR ACCEPTANCE. The party against whom a claim for the recovery of money is asserted may serve a written offer to confess judgment on the claim. In the event such an offer is made, the claimant may at any time thereafter serve a written offer to accept judgment on the claim. An offer to confess or accept judgment shall state that it is made pursuant to this section, name the offeror and offeree, identify the claim to which it relates, specify its amount, and include a certificate of service setting forth the name of the person served and the date, place, and method of service. The offer shall be deemed to include any recoverable prejudgment interest, attorney fees, and costs attributable to the claim to which it relates. The offer must be served more than twenty (20) days prior to trial, except that an offer served by mail must be served more than twenty-three (23) days prior to trial. Unless the offeree serves a written acceptance of the offer within twenty (20) days from the date the offer is served, the offer will be deemed rejected by the offeree. A pending offer is deemed void upon the court's decision on the merits of the claim to which the offer relates, and shall have no consequences under this section.

B. PARTIES. More than a single party may be named as offerors or offerees only with respect to jointly owned claims or claims of joint liability. Nothing herein prevents multiple parties from making an identical offer, or prevents a party from making identical offers to multiple parties. This section shall not apply if a

party's settlement of the claim to which the offer relates requires trial court approval.

C. SUBSEQUENT OFFERS. The making of an offer under this section does not preclude the offeror from making a subsequent offer; however, upon the making of a subsequent offer, all prior offers by that party shall be deemed void and shall have no further effect or consequences under this section.

D. JUDGMENT ON ACCEPTED OFFER. If an offer pursuant to subsection A of this section is timely accepted, copies of the offer and acceptance shall be filed promptly with an affidavit showing that acceptance was timely, and judgment shall be entered on the claim to which the offer relates. The judgment shall be in the amount of the accepted offer, and the judgment creditor shall not be entitled to any further recovery against the judgment debtor of prejudgment interest, attorney fees, or costs with respect to the claim to which the offer relates. A judgment granted under this subsection shall, if otherwise proper, be deemed final under Section 994 of Title 12 of the Oklahoma Statutes regardless of whether the trial court makes an express determination that there is no just reason for delay or expressly directs the filing of a final judgment.

E. EFFECT OF RESULT LESS FAVORABLE TO OFFEREE THAN REJECTED OFFER. If a claimant's offer is rejected, and the judgment obtained on the claim is not less than the amount of the offer, the claimant shall be entitled to recover reasonable attorney fees and costs, and in enforcing claimant's rights under this subsection, from the date the offer was served. If a claimant rejects an offer, and the judgment obtained on such claim is less than the amount of the offer, the offeror shall be entitled to recover reasonable attorney fees and costs incurred in defending the claim, and in enforcing the offeror's rights under this subsection, from the date the offer was served. A claimant who voluntarily dismisses a claim after

rejecting an offer shall not be liable for attorney fees and costs, unless the claimant files a subsequent action asserting the same claim and the judgment obtained on the claim is less than the amount of the rejected offer in the prior action. In the event adverse parties have each rejected offers made by the other which both qualify for an award of attorney fees and costs, the party who made the first offer shall be entitled to attorney fees and costs only until the date the second offer was served, after which the party making the second offer shall be entitled to attorney fees and costs. The recovery of attorney fees under this subsection shall not depend upon whether other authority supports recovery of attorney fees.

F. COMPARISON OF OFFER TO JUDGMENT. For purposes of comparing the amount of a judgment with the amount of an offer under subsection E of this section, the offer shall be compared to the amount of the judgment on the claim after any remittitur or additur, and adding any recoverable prejudgment interest, attorney fees, and costs attributable to the claim to which the offer relates until the date the offer was served.

G. SERVICE. An offer or acceptance under this section shall be served by hand delivery, facsimile transmission, or mail. Subsection D of Section 2006 of Title 12 of the Oklahoma Statutes, relating to computation of time after service of a document by mail, shall apply in computing the twenty (20) day period for accepting an offer under this section.

H. OTHER CLAIMS. This section applies to a claim asserted in a civil action for the recovery of money, regardless of whether other claims for either monetary or non-monetary relief are also asserted. When an offer under this section is rejected and claims are adjudicated which are not the subject of the offer, a special verdict form shall be used by which the jury identifies the amount awarded on the claim which is the subject of the offer.

I. OTHER PROVISIONS FOR ATTORNEY FEES OR COSTS. Where an award of attorney fees and costs is proper under subsection E of this section with respect to a claim for which other authority provides for recovery of attorney fees or costs, such other authority shall govern entitlement to such attorney fees or costs incurred with respect to the claim until the date the rejected offer was made, and this section shall govern the award of attorney fees and costs thereafter.

J. APPELLATE ATTORNEY FEES. Where a party is entitled to recover trial-related attorney fees and costs under this section with respect to a claim, that party is also entitled to recover reasonable attorney fees and costs incurred on appeal with respect to the claim if the party prevails on appeal as to the claim.

K. EVIDENCE OF REJECTED OFFER. Evidence of an offer which is rejected under this section shall not be admissible in any action or proceeding for any purpose except after judgment to determine rights conferred by this section.

L. EXECUTION; AUTOMATIC STAY. Where a claimant rejects an offer under this section, the portion of the judgment on the claim to which the offer relates shall be automatically stayed and the ten (10) day stay of execution provided by subsection A of Section 990.3 of Title 12 of the Oklahoma Statutes shall not commence until the filing of the final order determining entitlement to and amount of any attorney's fees and costs which may be recoverable under subsection E of this section with respect to the offer.

M. CERTAIN ACTIONS EXCLUDED. In a civil action for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, this section shall not apply unless the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars (\$100,000.00), or the defendant makes an offer of judgment more than One Hundred Thousand

Dollars (\$100,000.00). Any offer of judgment under this section may precede the demand.

N. SCOPE. This section shall apply to all civil actions filed from the date upon which it becomes effective.

SECTION 3. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2002, Section 9.1), is amended to read as follows:

Section 9.1 A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C and D of this section, award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;
2. The profitability of the misconduct to the defendant;
3. The duration of the misconduct and any concealment of it;
4. The degree of the defendant's awareness of the hazard and of its excessiveness;
5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
7. The financial condition of the defendant.

B. Category I. Where the jury finds by clear and convincing evidence that:

1. The defendant has been guilty of reckless disregard for the rights of others; or
2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding

and awarded actual damages, may award punitive damages in an amount not to exceed the greater of:

- a. One Hundred Thousand Dollars (\$100,000.00), or
- b. the amount of the actual damages awarded.

Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

C. Category II. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greatest of:

- a. Five Hundred Thousand Dollars (\$500,000.00),
- b. twice the amount of actual damages awarded, or
- c. the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.

The trial court shall reduce any award for punitive damages awarded pursuant to the provisions of subparagraph c of this paragraph by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any court of this state for the same conduct by the defendant or insurer. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

D. Category III. 1. Where the jury finds by clear and convincing evidence that:

~~1.~~

a. The defendant has acted intentionally and with malice towards others~~+~~, or

~~2.~~

b. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and ~~the~~

2. The court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans, the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in any amount the jury deems appropriate, without regard to the limitations set forth in subsections B and C of this section. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

E. In determining the amount, if any, of punitive damages to be awarded under either subsection B, C or D of this section, the jury shall make the award based upon the factors set forth in subsection A of this section.

F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 4. AMENDATORY 30 O.S. 2001, Section 4-201, is amended to read as follows:

Section 4-201. A. Before the entry of an order appointing a person or organization as a guardian of the person and before the

letters issue, the court may require the person or organization to be appointed to provide a bond to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

B. 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the court that:

~~a.~~ the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00) ~~+~~

~~and~~

~~b.~~ ~~the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child, or grandchild of the ward,~~

the court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

3. The provisions of this section shall not apply to cases subject to the Uniform Veterans Guardianship Act.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as

alleged in the petition or determined by the court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the court.

SECTION 5. AMENDATORY 30 O.S. 2001, Section 4-303, is amended to read as follows:

Section 4-303. A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the court for settlement and allowance as part of the guardianship report as required by Section 4-306 of this title.

B. 1. In addition, a guardian or limited guardian of the property shall:

- a. present accounts whenever the court requires that such report or accounts be presented, and
- b. with the annual report of accounts, report any changes of property listed on the inventory required by Section 4-301 of this title. The report shall state the compensation requested by the guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the

provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Forty Thousand Dollars (\$40,000.00) if a bond has been posted, or are worth less than Ten Thousand Dollars (\$10,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. 1. Unless waived at the discretion of the court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 4-305 of this title.

2. ~~Unless waived at the discretion of the court, or not required by Section 21.5 of Title 10 of the Oklahoma Statutes, a~~ A guardian of the person of a minor ward shall not be required to file ~~such annual~~ reports of the guardianship of the person of the ward ~~as required unless ordered by the court in such form as the court may require.~~

3. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 4-306 of this title.

E. The court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

G. An accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified and shall be rendered in the same manner as required by Title 58 of the Oklahoma Statutes with respect to an information of an estate of a decedent. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

H. In addition to other specified information any order of the court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

SECTION 6. REPEALER 12 O.S. 2001, Section 1101.1, as amended by Section 7, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 1101.1), is hereby repealed.

SECTION 7. This act shall become effective November 1, 2003.

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