

SB 740

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THE STATE SENATE
Monday, February 24, 2003

Senate Bill No. 740

As Amended

SENATE BILL NO. 740 - By: PRUITT of the Senate and MORGAN (Fred) of the House.

[damages - requirments - circumstances - effective date]

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

SECTION 1. 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, if the court finds at the conclusion of the evidence and prior to submission of the case to the jury, on the record and out of the presence of the jury, by clear and convincing evidence that the defendant acted with reckless disregard for the rights of others or intentionally and with malice towards others, the court shall instruct the jury, that in addition to actual damages, they 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. Punitive damage awards shall be based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;

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

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

13 1. The defendant has been guilty of reckless disregard for the
14 rights of others; or

15 2. An insurer has recklessly disregarded its duty to deal
16 fairly and act in good faith with its insured; the jury, in a
17 separate proceeding conducted after the jury has made such finding
18 and awarded actual damages, may award punitive damages in an amount
19 not to exceed the greater of:

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

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

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

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

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

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

19 The trial court shall reduce any award for punitive damages awarded
20 pursuant to the provisions of subparagraph c of this paragraph by
21 the amount it finds the defendant or insurer has previously paid as
22 a result of all punitive damage verdicts entered in any court of
23 this state for the same conduct by the defendant or insurer. Any

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

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

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

8 2. An insurer has intentionally and with malice breached its
9 duty to deal fairly and act in good faith with its insured; and the
10 court finds, on the record and out of the presence of the jury, that
11 there is evidence beyond a reasonable doubt that the defendant or
12 insurer acted intentionally and with malice and engaged in conduct
13 life-threatening to humans,
14 the jury, in a separate proceeding conducted after the jury has made
15 such finding and awarded actual damages, may award punitive damages
16 in any amount the jury deems appropriate, without regard to the
17 limitations set forth in subsections B and C of this section. Any
18 award of punitive damages under this subsection awarded in any
19 manner other than as required in this subsection shall be void and
20 reversible error.

21 E. In determining the amount, if any, of punitive damages to be
22 awarded under either subsection B, C or D of this section, the jury

1 shall make the award based upon the factors set forth in subsection
2 A of this section.

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

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

9 SECTION 2. This act shall become effective November 1, 2003.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-4-03 - DO PASS,
11 As Amended and Coauthored.