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Volume 5, Issue 14

THE BASSETT BULLETIN™

EVIDENCE OF WEALTH FOUND INADMISSIBLE IN A NON PUNITIVE DAMAGES SUIT

The Texas Supreme Court examined the issue of the admissibility of evidence of wealth in its recent decision in *Reliance Steel & Aluminum Co. v. Sevcik*, 51 Tex. Sup. J. 1437.

In this trucking case, which did not involve punitive damages, the Plaintiffs tendered evidence during the trial that the Defendant's annual revenues were \$1.9 billion.

The Plaintiff's counsel argued that the Defendant's gross revenues were relevant to show the Defendant was negligent in "running its drivers into the ground" even though it was big enough to "place more drivers on the road and have them work fewer hours." Over the objection of Defense counsel, the trial court allowed the admission of annual sales evidence. The jury was clearly influenced by Defendant's significant revenues since its total award to the Plaintiffs' was more than \$3 million dollars based upon past medical expenses of approximately \$34,000.00! The verdict also included an award of future earning capacity which represented earnings for the next 500 years based upon the Plaintiff's income during the five years before the accident.

THE FACTS OF THE CASE

The Plaintiffs were injured in a highway accident west of Houston when they were rear-ended by a tractor trailer owned by Reliance Steel & Aluminum. During trial, Plaintiffs offered evidence from the deposition of Reliance's corporate representative that the company had annual sales of approximately \$1.9 billion. Although Plaintiffs' counsel mentioned the gross revenue figures only once, he mentioned Reliance's large size from voir dire to closing argument, even though the size of the Defendant and the number of its employees or divisions had no apparent relation to the collision other than to suggest it could pay a big judgment. Over the strenuous objection of the Defendant's attorney, Plaintiffs' counsel persuaded the trial court that evidence of Reliance's annual revenues demonstrated that it was negligent in overworking its drivers. After the jury returned a verdict in excess of \$3 million dollars, Reliance appealed. However, the Court of Appeals held that the admission of the annual sales evidence was harmless.

TEST TO DETERMINE WHETHER THE ADMISSION OF EVIDENCE IS HARMLESS

The Texas Supreme Court stated in its opinion that the erroneous admission of evidence is harmless unless the error probably (though not necessarily) caused rendition of an improper Judgment. The Court recognized the impossibility of prescribing a specific test for harmless error review and noted that the standard is more a matter of judgment than a precise measurement. The Court commented that to determine whether error is harmless, the whole case must be evaluated from voir dire to closing argument, considering the state of the evidence, strength and weakness of the case, and the verdict.

OBSERVATIONS OF THE COURT

In its lengthy opinion the Texas Supreme Court noted that neither a Plaintiff's poverty nor a Defendant's wealth can help a jury decide whose negligence caused an accident. The Court observed that highlighting the relative wealth of a Defendant has a very real potential for prejudicing a jury's determination of other disputed issues in a tort case. To avoid creating prejudice, Texas courts historically have been extremely cautious in admitting evidence of a party's wealth. Even when evidence of wealth can be admitted on the issue of punitive damages, the Texas Civil Practices and Remedies Code §41.009 and §41.011(b) provides for a bifurcated trial so that evidence of a party's wealth can be used for no purpose other than determining punitive damages, after a determination of liability has been made.

THE SUPREME COURT'S RULING

The Texas Supreme Court reversed the Judgment of the Court of Appeals and remanded the suit for a new trial. In its ruling, the Court recognized the potential that juries will use their verdict to express biases against big businesses, particularly those without a strong local presence. Further, the Court held that gratuitous evidence about the financial circumstances of either party to a suit is not what a trial should be about.

WHAT DOES THIS MEAN?

According the Supreme Court's ruling, highlighting the relative wealth of parties to a suit has a very real potential of creating prejudice.

This means that except in cases involving punitive damages, trial counsel should object during both deposition and trial to all efforts, directly and indirectly, to introduce evidence of a party's wealth. Even when wealth can be used on the issue of punitive damages, a bifurcated trial should be requested so that evidence of wealth cannot be used for any purpose other than determination of punitive damages after a liability finding has been made.

To guard against the admission of evidence of a party's wealth, trial counsel should consider:

- (1) Objecting to opposing counsel's efforts to obtain evidence of a parties' wealth, both directly and indirectly;

- (2) In a punitive damages case counsel should timely request a bifurcated trial, pursuant to the Texas Civil Practice and Remedies Code §41.009 and §41.011(b); and
- (3) A Motion in Limine should be filed to exclude the admission of evidence of a party's wealth.

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