Chapter 1D.

Punitive Damages.

§ 1D-1. Purpose of punitive damages.

Punitive damages may be awarded, in an appropriate case and subject to the provisions of this Chapter, to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts. (1995, c. 514, s. 1.)

§ 1D-5. Definitions.

As used in this Chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of punitive damages. In a claim for relief in which a party seeks recovery of punitive damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes any party seeking recovery of punitive damages.

(2) "Compensatory damages" includes nominal damages.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief with respect to punitive damages.

(4) "Fraud" does not include constructive fraud unless an element of intent is present.

(5) "Malice" means a sense of personal ill will toward the claimant that activated or incited the defendant to perform the act or undertake the conduct that resulted in harm to the claimant.

(6) "Punitive damages" means extracompensatory damages awarded for the purposes set forth in G.S. 1D-1.

(7) "Willful or wanton conduct" means the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows or should know is reasonably likely to result in injury, damage, or other harm. "Willful or wanton conduct" means more than gross negligence. (1995, c. 514, s. 1.)

§ 1D-10. Scope of the Chapter.

This Chapter applies to every claim for punitive damages, regardless of whether the claim for relief is based on a statutory or a common-law right of action or based in equity. In an action subject to this Chapter, in whole or in part, the provisions of this Chapter prevail over any other law to the contrary. (1995, c. 514, s. 1.)

§ 1D-15. Standards for recovery of punitive damages.

(a) Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded:

(1) Fraud.

(2) Malice.

(3) Willful or wanton conduct.

(b) The claimant must prove the existence of an aggravating factor by clear and convincing evidence.

(c) Punitive damages shall not be awarded against a person solely on the basis of vicarious liability for the acts or omissions of another. Punitive damages may be awarded against a person only if that person participated in the conduct constituting the aggravating factor giving rise to the punitive damages, or if, in the case of a corporation, the officers, directors, or managers of the corporation participated in or condoned the conduct constituting the aggravating factor giving rise to punitive damages.

(d) Punitive damages shall not be awarded against a person solely for breach of contract. (1995, c. 514, s. 1.)

§ 1D-20. Election of extracompensatory remedies.

A claimant must elect, prior to judgment, between punitive damages and any other remedy pursuant to another statute that provides for multiple damages. (1995, c. 514, s. 1.)

§ 1D-25. Limitation of amount of recovery.

(a) In all actions seeking an award of punitive damages, the trier of fact shall determine the amount of punitive damages separately from the amount of compensation for all other damages.

(b) Punitive damages awarded against a defendant shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars ($250,000), whichever is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum amount specified under this subsection, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount.

(c) The provisions of subsection (b) of this section shall not be made known to the trier of fact through any means, including voir dire, the introduction into evidence, argument, or instructions to the jury. (1995, c. 514, s. 1.)

§ 1D-26. Driving while impaired; exemption from cap.

G.S. 1D-25(b) shall not apply to a claim for punitive damages for injury or harm arising from a defendant's operation of a motor vehicle if the actions of the defendant in operating the motor vehicle would give rise to an offense of driving while impaired under G.S. 20-138.1, 20-138.2, or 20-138.5. (1995, c. 514, s. 1.)

§ 1D-27. Injuring energy, water, wastewater, or manufacturing facility; exemption from cap.

G.S. 1D-25(b) shall not apply to a claim for punitive damages for injury or harm arising from actions of the defendant that constitute a violation of G.S. 14-150.2(b), 14-150.3(a), 14-159.1(a), (b), or (c), or 62-323(a). (2023-47, s. 1.5; 2024-45, s. 9(e).)

§ 1D-30. Bifurcated trial.

Upon the motion of a defendant, the issues of liability for compensatory damages and the amount of compensatory damages, if any, shall be tried separately from the issues of liability for punitive damages and the amount of punitive damages, if any. Evidence relating solely to punitive damages shall not be admissible until the trier of fact has determined that the defendant is liable for compensatory damages and has determined the amount of compensatory damages. The same trier of fact that tried the issues relating to compensatory damages shall try the issues relating to punitive damages. (1995, c. 514, s. 1.)

§ 1D-35. Punitive damages awards.

In determining the amount of punitive damages, if any, to be awarded, the trier of fact:

(1) Shall consider the purposes of punitive damages set forth in G.S. 1D-1; and

(2) May consider only that evidence that relates to the following:

a. The reprehensibility of the defendant's motives and conduct.

b. The likelihood, at the relevant time, of serious harm.

c. The degree of the defendant's awareness of the probable consequences of its conduct.

d. The duration of the defendant's conduct.

e. The actual damages suffered by the claimant.

f. Any concealment by the defendant of the facts or consequences of its conduct.

g. The existence and frequency of any similar past conduct by the defendant.

h. Whether the defendant profited from the conduct.

i. The defendant's ability to pay punitive damages, as evidenced by its revenues or net worth. (1995, c. 514, s. 1.)

§ 1D-40. Jury instructions.

In a jury trial, the court shall instruct the jury with regard to subdivisions (1) and (2) of G.S. 1D-35. (1995, c. 514, s. 1.)

§ 1D-45. Frivolous or malicious actions; attorneys' fees.

The court shall award reasonable attorneys' fees, resulting from the defense against the punitive damages claim, against a claimant who files a claim for punitive damages that the claimant knows or should have known to be frivolous or malicious. The court shall award reasonable attorney fees against a defendant who asserts a defense in a punitive damages claim that the defendant knows or should have known to be frivolous or malicious. (1995, c. 514, s. 1.)

§ 1D-50. Judicial review of award.

When reviewing the evidence regarding a finding by the trier of fact concerning liability for punitive damages in accordance with G.S. 1D-15(a), or regarding the amount of punitive damages awarded, the trial court shall state in a written opinion its reasons for upholding or disturbing the finding or award. In doing so, the court shall address with specificity the evidence, or lack thereof, as it bears on the liability for or the amount of punitive damages, in light of the requirements of this Chapter. (1995, c. 514, s. 1.)