MARIPOSA COUNTY RESOLUTION NO. 87- 163

A RESOLUTION IN SUPPORT OF: SB 282 (Maddy); AB 1522 (Leslie); and
SCA 27 (Doollittle) - TORT REFORM BILLS

WHEREAS, the following tort reform legislation has been proposed:
1) SB 282 (Maddy), relative to punitive damages; a copy of which is attached hereto as Exhibit "A"
2) AB 1522 (Leslie), relative to civil law: punitive damages; a copy of which is attached hereto as Exhibit "B"
3) SCA 27 (Doollittle), relative to juries: civil causes; a copy of which is attached hereto as Exhibit "C"

BE IT HEREBY RESOLVED by the Mariposa County Board of Supervisors, a political subdivision of the State of California, that the Board hereby supports the above-referenced tort reform bills.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 5th day of May, 1987, by the following vote:

AYES: BAGGETT, DALTON, ERICKSON, RADANOVICH
NOES: NONE
ABSENT: NONE
ABSTAINED: TABER

LEROY RADANOVICH, Chairman
Mariposa County Board of Supervisors

ATTEST:

MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

JEFFREY G. GREEN, County Counsel
For purposes of punitive damages, existing law defines oppression as subjecting a person to cruel and unjust hardship in disregard of that person's right.

This bill would instead define oppression as acting with the specific intent to wrongfully subject a person to cruel and unjust hardship.

For purposes of punitive damages, fraud requires an intention of depriving a person of property or legal rights or otherwise causing injury.

This bill would instead require a specific intent of depriving a person of property or legal rights.


The people of the State of California do enact as follows:

SECTION 1. Section 3294 of the Civil Code is amended to read:

3294. (a) In an action for the breach of an obligation not arising from contract, where it is proven beyond a reasonable doubt that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct with knowledge of its wrongfulness for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

(c) As used in this section, the following definitions shall apply:

1. "Malice" means conduct which is intended by the defendant with the specific intent to cause injury to the plaintiff or conduct which is carried on by the defendant with a conscious disregard of the rights or safety of others.

2. "Oppression" means subjecting acting with the specific intent to wrongfully subject a person to cruel and unjust hardship in conscious disregard of that person's rights.

3. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention specific intent on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

4. "Managing agent" means an agent or employee who has been specifically delegated authority as a manager by the corporation to determine the policy of the corporation as a whole.

(d) Damages may be recovered pursuant to this section in an action pursuant to Section 377 of the Code of Civil Procedure or Section 573 of the Probate Code based upon a death which resulted from a homicide for which the defendant has been convicted of a felony, whether or not the decedent died instantly or survived the fatal injury for some period of time. The procedures for joinder and consolidation contained in Section 377 of the Code of Civil Procedure shall apply to prevent multiple recoveries of punitive or exemplary damages based upon the same wrongful act.
SENATE BILL  
No. 282

Introduced by Senator Maddy

February 3, 1987

An act to amend Section 3294 of the Civil Code, relating to punitive damages.

LEGISLATIVE COUNSEL’S DIGEST

SB 282, as introduced, Maddy. Punitive damages.

Existing law provides for the recovery of punitive damages in an action for a breach of an obligation not arising from a contract if the defendant has been guilty of oppression, fraud, or malice.

This bill would require that it be proven beyond a reasonable doubt that the defendant was guilty of oppression, fraud, or malice in order to recover punitive damages.

Existing law provides that an employer is not liable for punitive damages based upon acts of an employee unless the employer had advance knowledge of the unfitness of the employee, as specified, authorized or ratified the conduct, or was personally guilty of the act. For a corporate employer, the knowledge, authorization, ratification, or act must have been by an officer, director, or managing agent.

This bill would eliminate knowledge of unfitness of the employee as a ground for imposing punitive damages on an employer. It would require that the authorization or ratification of wrongful conduct, for which punitive damages may be awarded, must have been with knowledge of its wrongfulness. The bill would also define managing agent.

For purposes of punitive damages, existing law defines malice as conduct intended to cause injury to the defendant or which is carried on with a conscious disregard for the rights or safety of others.

This bill would instead define malice as conduct with the specific intent to cause injury.
The people of the State of California do enact as follows:

SECTION 1. Article 3 (commencing with Section 3294) of Chapter 1 of Title 2 of Part 1 of Division 4 of the Civil Code is repealed.

SEC. 2. Article 3 (commencing with Section 3294) is added to Chapter 1 of Title 2 of Part 1 of Division 4 of the Civil Code, to read:

Article 3. Punitive Damages

3294. This article may be cited as the Punitive Damages Limitation Act.
3294.2. The following terms, as used in this article, have the meaning set forth below, unless the context clearly requires otherwise:
(a) "Noneconomic damages" means pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages and any other theory of damages such as fear of loss, illness, or injury.
(b) "Economic damages" means objectively verifiable pecuniary damages arising from medical expenses and medical care, rehabilitation services, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and other objectively verifiable monetary losses.
(c) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity or unincorporated association of persons.
3294.4. In any action for personal injury, property damage, or wrongful death, an award for punitive damages may not exceed twice the award of economic damages.
3294.6. The imposition of punitive damages requires a finding of actual malice or actual fraud by clear and convincing evidence.
3294.8. Punitive damages may not be included in an initial prayer for damages, but may only be requested after an initial finding of liability. The award of those damages and the amount of any of those damages shall be decided by the judge and not the jury.
3295. In any action for personal injury, property damage, economic loss, or wrongful death in which punitive damages are sought, evidence of defendant's financial means is not admissible until there have been findings of liability and that punitive damages are supportable under the facts.
3295.2. Where punitive damages have previously been awarded against a defendant in any state or federal proceeding, no additional punitive damages shall be awarded against that defendant in subsequent proceedings on the basis of the evidence produced in the proceeding in which punitive damages were awarded, unless it is established, by clear and convincing evidence, that new evidence has been discovered which would be admissible and which would have a substantial effect on the award of additional punitive damages.
3295.4. Absent proof, by clear and convincing evidence, that the defendant intentionally and fraudulently withheld from or misrepresented to the state or federal agency information known to be material and relevant to the harm in question, punitive damages may not be awarded where the product, structure, or services alleged to have caused the claimant's harm complied in material respects, at the time of manufacture, construction, or rendering of the service, with standards, conditions, or specifications established, adopted, or approved by a federal or state statute or by an agency of the federal or state government responsible for the design, formulation, labeling, packaging, performance, or approval of the product, structure, or
services.
2 3295.6. (a) If liability is found in a personal injury or
3 wrongful death action, then the trier of fact, in addition
4 to other appropriate findings, shall make separate
5 findings for each claimant specifying the amount of the
6 following:
7 (1) Any past damages.
8 (2) Any future damages and the periods over which
9 they will accrue, on an annual basis, for each of the
10 following types of damages:
11 (A) Medical and other costs of health care.
12 (B) Other economic loss.
13 (C) Noneconomic loss.
14 (b) The calculation of all future medical care and
15 other costs of health care and future noneconomic loss
16 shall reflect the costs and losses during the period of time
17 the claimant will sustain those costs and losses. The
18 calculation of other economic loss shall be based on the
19 losses during the period of time the person would have
20 lived but for the injury upon which the claim is based.
21 3295.8. Nothing in this article shall be construed to
22 create a cause of action. Nothing in this article shall be
23 construed, in any way, to alter the immunity from civil
24 action of any unit of government, public agency,
25 individual, or corporation.
Senate Constitutional Amendment No. 27

Introduced by Senator Doolittle

March 6, 1987

Senate Constitutional Amendment No. 27—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 16 of Article I thereof, relating to trials.

LEGISLATIVE COUNSEL'S DIGEST

SCA 27, as introduced, Doolittle. Juries: civil causes. The California Constitution presently provides that in a civil jury trial, ¾ of the jury may render a verdict. This measure would require a jury verdict awarding punitive damages or damages by way of example in a civil trial to be unanimous.


Resolved by the Senate, the Assembly concurring, That
12 the Legislature of the State of California at its 1987-88
13 Regular Session commencing on the first day of
14 December, 1986, two-thirds of the members elected to
15 each of the two houses of the Legislature voting therefor,
16 hereby proposes to the people of the State of California
17 that the Constitution of the State be amended by
18 amending Section 16 of Article I thereof, to read:
19 SEC. 16. Trial by jury is an inviolate right and shall be
20 secured to all, but in a civil cause three-fourths of the
21 jury may render a verdict, except that a verdict
22 awarding punitive damages or damages by way of
23 example shall be unanimous. A jury may be waived in a
24 criminal cause by the consent of both parties expressed
25 in open court by the defendant and the defendant's
counsel. In a civil cause a jury may be waived by the
In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes in municipal or justice court the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.