

The Oregon Supreme Court recently confirmed that ORS 31.715 is constitutional. That statute prohibits a claimant from recovering non-economic damages resulting from a motor vehicle accident under two circumstances: If the plaintiff was intoxicated at the time of the accident or if the plaintiff was not insured under an automobile liability policy.

### No Noneconomic Damages for Uninsured or Intoxicated Claimants

ORS 31.715 prohibits the recovery of non-economic damages by a plaintiff who is in violation of ORS 806.010, as follows:

“(1) Except as provided in this section, a plaintiff may not recover non-economic damages, as defined in ORS 31.710, in any action for injury or death arising out of the operation of a motor vehicle if the plaintiff was in violation of ORS 806.010 (driving uninsured) or 813.010 (driving under the influence of intoxicants) at the time the act or omission causing the death or injury occurred. A claim for non-economic damages shall not be considered by the jury if the jury determines that the limitation on liability established by this section applies to the claim for non-economic damages.”

“(2) For the purpose of the limitation on liability established by this section, a person is conclusively presumed to have been in violation of ORS 806.010 or 813.010 if the person is convicted in a criminal

proceeding of one or both of those offenses.”

The statute also provides an exception for plaintiffs with lapsed insurance policies:

“(6) The limitation on liability established by this section based on a violation of ORS 806.010 does not apply if the plaintiff in the civil action was insured under a motor vehicle liability insurance policy within 180 days before the act or omission occurred, and the plaintiff has not operated a motor vehicle in violation of ORS 806.010 within the one-year period immediately preceding the date on which coverage under the motor vehicle liability insurance policy lapsed.”

### The Court’s Opinion

This statute had previously been upheld by the Court of Appeals. As in the lower court, the plaintiff made two primary arguments. First, plaintiff contended that the law violated Article I, section 10 of the Oregon Constitution, often referred to as the “Remedies Clause.” This ensures that “every man shall have remedy by due course of law for injury done him...” The Supreme Court framed the issue as whether “plaintiff, who was herself in violation of a law relating to her right to be on a public highway at the time of the accident (driving uninsured), nonetheless would have had an absolute right to recover damages for all her injuries – including noneconomic injuries – resulting from defendant’s negligence.” Since the Court’s previous holdings required such rights to be determined as of the date of the Constitution’s drafting in 1857, this neces-

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sitated an interesting survey of such nineteenth century oddities as “Sunday laws,” which prohibited unnecessary traveling on Sundays (some courts prohibited recovery for those in violation of such laws).

The Court’s holding on the Remedies Clause argument was actually quite broad, concluding that “no absolute common-law right that existed when the Oregon Constitution was drafted in 1857 would have guaranteed plaintiff a remedy for her injuries – either economic or noneconomic – under the circumstances of this case.” By contrast, the Court of Appeals had rejected the Remedies Clause argument because plaintiff, in fact, had some remaining remedy - economic damages. This should put to an end one theory advanced by some plaintiff’s attorneys, that the Court of Appeals had actually held the statute unconstitutional under most circumstances. The parties in the case had agreed that economic damages were \$4,210 and noneconomic damages \$5,790. The argument has been that the Court of Appeals actually decided that the plaintiff had a “substantial remedy” because the economic damages amounted to 42.1% of the total stipulated damages. This analysis was not even mentioned in the Supreme Court opinion.

As had the Court of Appeals, the Supreme Court quickly dispensed with plaintiff’s argument under Article I, section 17 (right to trial by jury). The right to a jury trial does not create a “substantive claim or theory of recovery in favor of any party.” Instead, it “guarantees a jury trial in civil actions for which the common law provided a jury trial when the Oregon Constitution was adopted in 1857.” Having already held that there was no right to such an action, it follows that there was, and is, no right to a jury.

### **Conclusion**

ORS 31.715 has once again been held constitutional and should be relied upon to deny noneconomic damages to uninsured or intoxicated claimants under the circumstances described in the statute. Furthermore, the unequivocal nature of this opinion should discourage any creative arguments that the statute remains unconstitutional under some circumstances. ❖

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