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## Case Study

# Remedies

## Statute Barring Noneconomic Damages for Uninsured and Intoxicated Drivers Found Constitutional

Lawson v. Hoke, \_Or App\_ (10/15/03)

— by **Ryan McLellan**

ORS 18.592(1) provides that a plaintiff may not recover noneconomic damages in a personal injury action arising out of a motor vehicle accident if the plaintiff was driving while uninsured or driving while intoxicated. The constitutionality of this statute was recently upheld by the Oregon Court of Appeals in *Lawson v. Hoke*.

In *Lawson v. Hoke*, Plaintiff was injured when Defendant drove through a stop sign at an intersection and collided with Plaintiff's car. Plaintiff did not have insurance at the time of the accident. Plaintiff brought a lawsuit against defendant for negligence, seeking both economic and noneconomic damages. Despite Defendant's arguments that ORS 18.592(1) barred Plaintiff from recovering noneconomic damages, the trial court awarded \$5,790 in noneconomic damages to Plaintiff. In making its award, the trial court agreed with the Plaintiff that ORS 18.592(1) violated Article I, section 10 of the Oregon Constitution, guaranteeing Plaintiff a remedy for her injury. Defendant appealed the award of noneconomic damages, arguing that ORS 18.592(1) did not violate the Oregon constitution's remedy clause.

Oregon courts have held that Article I, section 10 of the Oregon Constitution prohibits the legislature from abolishing a Plaintiff's remedy if the common law of Oregon would have recognized that remedy in 1857, when the Oregon Constitution was adopted.

The first issue analyzed by the court was whether a remedy for negligence arising out of a motor vehicle accident would have been recognized in 1857. The Court of Appeals found that negligence claims arising from automobile accidents are sufficiently similar to common-law causes of action that existed in 1857 to fall within the scope of Article I, section 10.

The court then analyzed whether the legislature abolished the plaintiff's remedy by enacting ORS 18.592(1). The court found that the remedy clause of the Oregon constitution does not guarantee a right to receive noneconomic damages. The court further held that ORS 18.592(1) did not deprive Plaintiff of a substantial remedy and therefore did not abolish Plaintiff's constitutionally protected remedy under Article I, section 10.

The court finally concluded that because Plaintiff did not have a substantive right to receive noneconomic damages, removing that issue from the jury did not violate Article I, section 17 of the Oregon Constitution, which guarantees a person's right to a jury in civil matters. ❖

— Full case available at: <http://www.publications.ojd.state.or.us/A117388.htm>.

— For additional information, please visit our website at [www.smithfreed.com](http://www.smithfreed.com).

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