



Case Study

Wrongful Death: \$500k Non-Economic Damages Cap Survives Another Assault

— by Jeffrey D. Eberhard

Under ORS 31.710(1), non-economic damages in wrongful death cases are capped at \$500,000. Although the Oregon Supreme Court has upheld the constitutionality of this statute, plaintiffs continue to come up with new (and sometimes recycled) arguments in an attempt to avoid its effects.

In Hughes v. Peacehealth, Civ. No. A123782, in the Court of Appeals for the State of Oregon (March 15, 2006), the Estate of Jill Dieringer (plaintiff) brought a wrongful death action against PeaceHealth Medical Group, alleging that negligent medical treatment at its facility led to Ms. Dieringer's death. The case was tried before a jury, which found the defendant negligent, and awarded \$100,000 in economic damages and \$1 million in non-economic damages. The trial court granted defendant's motion to reduce the non-economic damage award to \$500,000 pursuant to ORS 31.710 (1).

Plaintiff appealed, arguing the cap on noneconomic damages violated two provisions of the Oregon Constitution: (a) Article I, section 10, which guarantees the right to a full and complete remedy, and (b) Article I, section 17, which guarantees the right to trial by jury. The court of appeals first noted that the Oregon Supreme Court squarely rejected plaintiff's first argument in Greist v. Phillips, 322 Or 281 (1995), and thus rejected plaintiff's first argument without much discussion.

Plaintiff's second argument (right to jury trial), was also rejected in Greist. However, plaintiff pointed out that a later Supreme Court decision (Lakin v. Senco Products, Inc., 329 Or 62 (1999)) corrected a misstatement of law that the Greist Court may have relied on in upholding the constitutionality of ORS

31.710(1). Greist reasoned that "[w]hen Article I, section 17 of the Oregon Constitution was adopted, a jury's determination of the amount of damages to be awarded in tort actions was not protected from judicial alteration." The Lakin Court pointed out that Oregon trial courts never have had the power to reduce a jury's verdict ("judicial remittitur") over the objection of the prevailing party, who could always reject the remittitur and demand a new trial.

Plaintiff argued that this correction by the Lakin Court reopened the question of whether the statute violated her right to trial by jury.

The court of appeals agreed that "at first blush, [the Lakin decision] would seem to reopen the question that Greist had resolved." However, after examining both opinions in detail, the court concluded that Greist remained controlling, explaining that the "dicta" that the Lakin Court corrected was merely an alternative analysis - one that was not necessary to the court's holding. Adhering to the Greist Court's determination that there is no right to a jury trial on the issue of noneconomic damages in a wrongful death action, the court rejected plaintiff's second argument and affirmed the trial court's ruling. ❖

Claims Pointer: In Oregon, non-economic damages in wrongful death cases are capped at \$500,000 under ORS 31.710.

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