

# OK Supreme Court rules cap on noneconomic damages unconstitutional

On Tuesday, the Oklahoma Supreme Court ruled Oklahoma's statutory cap on noneconomic damages violates the Oklahoma Constitution because it singles out for different treatment less than the entire class of similarly situated persons who may sue to recover for bodily injury.

In plain terms, the court found the statute is a "special law" that limits a living plaintiff's right to recover noneconomic damages to no more than \$350,000 and cannot be reconciled with the provision of the Oklahoma Constitution that expressly forbids any statutory damages limitation for injuries resulting in death.

Oklahoma's statutory cap provides that in any civil action arising from claimed bodily injury, the trier of fact may award a plaintiff for noneconomic loss no more than \$350,000, regardless of the number of parties against whom the action is brought or the number of actions brought—unless the claimed bodily injury is the result of more than mere negligence (i.e. reckless disregard for the rights of others, gross negligence, fraud, intentional injury, or malice).

The statute defines noneconomic damages as "nonpecuniary harm that arises from a bodily injury that is the subject of a civil action" and includes damages for, among other things, pain and suffering, loss of consortium, companionship, mental anguish, etc.

In *Beason v. I.E. Miller Services, Incorporated*, an employee was injured while operating a crane in his employment with I.E. Miller Services. As a result of his injuries, the employee underwent two amputations on parts of his arm. The

employee and his wife sued I.E. Miller in a personal injury action. The matter went to trial in Oklahoma County and the jury awarded the employee and his wife a combined total of \$15 million – \$6 million of which was allocated as noneconomic damages. Applying the statutory cap, the district court reduced the jury verdict to \$9.7 million, as the noneconomic damages to plaintiffs was lowered to \$700,000, or \$350,000 per person. On appeal to the Oklahoma Supreme Court, plaintiffs challenged the damages cap.

The Oklahoma Supreme Court held the statutory noneconomic damages cap is unconstitutional for one reason: the statute purports to limit recovery for pain and suffering in cases where the plaintiff survives the injury-causing event, while persons who die from the injury-causing event face no such limitation under Oklahoma Constitution Article 23, section 7 (“The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation . . . ”).

The court explained that “[b]y forbidding limits on recovery for injuries resulting in death, the people have left it to juries to determine the amount of compensation for pain and suffering in such cases, and no good reason exists for the Legislature to provide a different rule for the same detriment simply because the victim survives the harm-causing event.”

Moving forward, the court noted that if the people of Oklahoma believe the jury system and judicial review are no longer effective in deciding compensation in private personal injury cases, then constitutional amendment is the proper way to make such a change, “not a special law.”

The impact of the Oklahoma Supreme Court’s decision in *Beason* is profound.

Now, after *Beason*, with the statutory damages cap removed, an

unemployed, catastrophically injured plaintiff, and a defendant, may be looking at a substantially different recovery and exposure. Consequently, and somewhat counter-intuitively, because the risk of large verdicts just went up, cases may settle earlier because of the uncertainty associated with leaving a damages calculation up to a jury.

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