

OREGON LAW UPDATE

It's Medieval: Determining Applicability of Oregon Law's Cap on Noneconomic Damages

case in point...

From the desk of Jeff Eberhard: To determine whether Oregon's statute capping noneconomic damages at \$500,000 applies to a plaintiff's claims, the court looks to whether there was a common-law claim recognized in 1857—the inception of Oregon's Constitution. If such a common-law claim was recognized at that time, then the statute capping noneconomic damages violates the Oregon Constitution and the noneconomic damages cannot be capped for that claim. If the claim was not recognized at common law in 1857, then the plaintiff's recovery for noneconomic damages for that claim can be reduced to \$500,000 under the statute. The question before the court in *Rains v. Stayton Builders Mart, Inc.* is whether the statute capping noneconomic damages can be applied to a strict products liability claim? Also, does it apply to a spouse's loss of consortium claim?

Claims Pointer: : As to the strict products liability claim, such a claim was not recognized at common law in 1857 and therefore the statute capping noneconomic damages applied to the strict products liability claim and plaintiff's recovery could be reduced accordingly (of note, for tactical reasons the plaintiff did not plead a standard negligence claim; if he did, the cap would not apply). As to the wife's loss of consortium claim, even though a woman could not recover damages for loss of consortium in 1857 (only a man could recover for loss of consortium), the court nevertheless chose to disregard the law's history in this respect and concluded that the statutory cap did not apply to the wife's loss of consortium claim.

Rains v. Stayton Builders Mart, Inc., 264 Or App 636, --- P3d --- (2014).

Plaintiffs Kevin Rains and his wife Mitzi sued several parties seeking damages for injuries Kevin sustained while working as a subcontractor on a construction project. While on a job, a wood board Kevin was standing on broke, causing him to fall 16 feet to the ground. Kevin's injuries rendered him a paraplegic. Kevin brought claims against a number of parties for negligence and strict products liability. Mitzi also brought a claim for loss of consortium. Among the defendants were Stayton Builders Mart ("Stayton") who supplied the board to the job site; and Weyerhaeuser Company ("Weyerhaeuser"), who provided lumber to Stayton.

At trial, the jury returned a verdict against Stayton and Weyerhaeuser. Additionally, the jury applied the comparative fault statute, ORS 31.600(2), and designated Stayton 30 percent at fault, Weyerhaeuser 45 percent at fault, and Kevin 25 percent at fault. Further, the jury awarded Kevin \$5,237,700 in economic damages; \$3,125,000 in noneconomic damages; and awarded Mitzi \$1,012,500 in noneconomic damages. After the jury returned their verdict, Weyerhaeuser filed a motion to apply the statutory cap on both plaintiffs' noneconomic damages award. The trial court denied Weyerhaeuser's motion. Weyerhaeuser appealed.

On appeal, Weyerhaeuser raised thirteen assignments of error. One of Weyerhaeuser's arguments on appeal was that the trial court should have reduced Kevin's noneconomic damages award to \$500,000 under ORS 31.710. Weyerhaeuser also argued that the statutory cap should have also been applied to Mitzi's loss of consortium claim, reducing her recovery to \$500,000 as well.

In Oregon, ORS 31.710(1) caps noneconomic damages at \$500,000 in most civil cases arising out of bodily injury. In *Klutschkowski v. PeaceHealth*, 354 Or 150, 311 P3d 461 (2013), the Oregon Supreme Court explains the somewhat complicated test for determining whether the statutory cap applies in a civil case. The court addressed the argument that the statutory cap violates the Oregon Constitution, Article I, section 17, which provides: "In all civil cases the right of Trial by Jury shall remain inviolate." There, the court advised:

"Article I, section 17, guarantees a jury trial in civil actions for which the common law provided a jury trial when the Oregon Constitution was adopted in 1857 and in cases of like nature. In any such case, the trial of all issues of fact must be by jury. The determination of damages in a personal injury case is a question of fact. * * * The legislature may not interfere with the full effect of a jury's assessment of



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noneconomic damages, at least as to civil cases in which the right to jury trial was customary in 1857[.]”

that the statutory cap on Mitzi's claim could not be applied.

Klutschkowski v. PeaceHealth, 354 Or. 150, 177, 311 P.3d 461, 476 (2013). Accordingly, the test requires the court to examine the state of the common law in 1857 as it relates to plaintiff's claims in the present case, to determine whether the statutory cap applies. If the present claims were recognized at common law in 1857, then ORS 31.710 and the cap on noneconomic damages cannot be applied to reduce the jury's award of noneconomic damages because it violates Oregon's Constitution. However, if the present claims were not recognized at common law in 1857, then the statutory cap can be applied to reduce the plaintiff's recovery to \$500,000 in noneconomic damages.

In *Rains*, the court ultimately concluded that in 1857, there was no common-law tradition with respect to a strict products liability claim and therefore the statutory cap did apply to reduce Kevin's noneconomic damages. This is a significant change in Oregon law. However, if a plaintiff sues and prevails on a negligence claim, the cap would not apply.

As to Mitzi's loss of consortium claim the court concluded that the claim was in the "class of cases" recognized at common law in 1857 and therefore the statute capping economic damages did not apply to this claim. Interestingly, the court's analysis began with the case, *Sheard v. Oregon Electric Ry. Co.*, 137 Or 341 (1931), where the Court held that at common law a married woman could not sustain an action for the loss of consortium of her husband—even though a husband could sustain the same claim. Weyerhaeuser argued that because a wife's loss of consortium claim arising out of an injury to her husband was not a claim recognized in 1857, the statute capping noneconomic damages should apply.

The court agreed with Weyerhaeuser as to the state of the law in 1857 in this respect. Nevertheless, the court concluded that even though a woman could not recover for a loss of consortium claim in 1857, the injury sustained in the present case—loss of consortium related to a spouse's injury—was recognized in 1857 which is enough to conclude



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