



## Oregon Supreme Court Determines that the Noneconomic Damages Cap Does Not Apply in Any Case Involving Workers Compensation

**From the Desk of Ryan McLellan:** Oregon's \$500,000 noneconomic damages cap purports to limit the amount of noneconomic damages a plaintiff can recover. One purported exception, which has long been advocated for by plaintiff's counsel in an attempt to avoid the cap, states that the cap is not applicable to cases "subject to" Oregon's workers' compensation benefits law. Does the exception really mean that any claim where an injured worker has received workers' compensation benefits for an injury is not subject to the cap? Read on to find out.

**Claims Pointer:** Oregon's Supreme Court has determined that Oregon's \$500,000 cap on noneconomic damages does not apply if the plaintiff has received workers' compensation benefits for the injury at issue. Based on its expansive interpretation of the statutory cap, any lawsuit where the plaintiff received workers' compensation benefits is no longer subject to the noneconomic damages cap. Previously, though the noneconomic damages cap stood on perilous constitutional ground, claims for wrongful death—including those arising from a workplace injury—were subject to the cap. This case ends that trend and means the damages in any wrongful death or significant injury case where workers' compensation is involved is no longer limited by statute.

### [Vasquez v. Double Press Mfg., Inc., 364 Or 609 \(Apr. 4, 2019\).](#)

Oregon's \$500,000 noneconomic damages cap is set out in ORS 31.710(1). It reads, in its entirety:

Except for claims subject to ORS 30.260 and **ORS chapter 656**, in any civil action seeking damages arising out of bodily injury, including emotional injury or distress, death or property damage of any one person including claims for loss of care, comfort, companionship and society and loss of consortium, the amount awarded for noneconomic damages shall not exceed \$500,000.

(emphasis added). ORS chapter 656 contains Oregon's workers' compensation laws, which creates a no-fault compensation system that provides insurance coverage for injured workers.

This case arose from plaintiff's injury sustained while operating a machine used for hay baling in the course and scope of his employment with a feed store. After suffering a grievous injury, plaintiff received workers' compensation benefits from his employer and filed a lawsuit against Double Press Manufacturing ("Double Press") the manufacturer, seller and installer of the machine. At trial, the jury awarded over \$2 million in economic damages and over \$8 million in noneconomic damages, reduced by plaintiff's 40% share of the fault. Double Press moved for a judgment notwithstanding the verdict and a new trial, arguing that plaintiff's noneconomic damages award should be reduced to \$500,000 pursuant to ORS 31.710(1). The trial court ruled that the cap violated the jury trial provision of the Oregon Constitution.

Double Press appealed and the Oregon Court of Appeals affirmed, only to withdraw its opinion shortly thereafter. After



**Ryan McLellan**  
rmclellan@smithfreed.com

**Phone:** 503.227.2424  
**Fax:** 503.227.2535  
**www.smithfreed.com**

**Oregon Office**  
111 SW 5th Ave, Suite 4300  
Portland, OR 97204





withdrawing its opinion, the court of appeals examined plaintiff's alternative arguments against the application of the damages cap. Those arguments included: (1) that plaintiff's case fell within the exception in ORS 31.710(1) for cases subject to the workers' compensation laws; and (2) that the damages cap violates Oregon's constitutional remedy clause. The court rejected the first and affirmed the trial court's opinion based on the second. Double Press petitioned the Supreme Court for review, arguing that the court of appeals erred in its constitutional analysis. The Supreme Court accepted review.

The Court immediately identified its reluctance to decide the case on constitutional grounds by stating that it will "avoid reaching constitutional questions in advance of the necessity of deciding them." Accordingly, the Court identified that the focus of its analysis would center on plaintiff's first alternative argument at the court of appeals, whether plaintiff's case fell into the workers' compensation exception in ORS 31.710(1). Plaintiff's theory was summarized as follows: "although the present case is not a claim against his employer, it is nonetheless 'subject to' ORS chapter 656, as that term is used in ORS 31.710(1)." Double Press countered that, "when the legislature enacted ORS 31.710 in 1987, it would have understood that, in common legal parlance, a 'claim' subject to ORS chapter 656 is simply a claim of an injured worker for workers' compensation insurance benefits authorized by ORS chapter 656 and provided by the employer's insurer pursuant to the majority of the statutes located in ORS chapter 656."

To resolve the conflicting interpretations, the Court engaged in statutory interpretation. That process, familiar in Oregon, begins with (1) an examination of the text of the statute. Next, the Court examines the context of the statute, and finally, (3) the Court consults any available legislative history.

The Court's review of the text of the statute did not provide it with a satisfactory answer that would resolve the parties' conflicting interpretations. After examining the statutory and dictionary definitions of "subject to" and "claim," the Court concluded that "the ordinary meanings of the terms 'claim' and 'subject to' are not dispositive" and, therefore, "the text of ORS 31.710(1), viewed in isolation, appears ambiguous." Because the text was ambiguous, the Court looked to resolve the ambiguity under the second step.

Turning to context, the Court analyzed (1) the contents of ORS chapter 656 which contains the workers' compensation laws and "to which ORS 31.710(1) refers" and (2) "the remainder of the 1987 enactment" of ORS 31.710. After an examination of the context, it concluded that the "context supports the broader meaning of the phrase 'claims subject to ORS chapter 656' that plaintiff advances."

Finally, after determining that the context supported plaintiff's position, the Court turned to legislative history. At the outset, however, the Court noted that "the legislative history of ORS 31.710(1)...does not further illuminate the legislature's intention." Both parties acknowledged that "no legislative history from either the 1986 interim committee that proposed the initial draft of the noneconomic damages cap nor the 1987 legislature that enacted the final version of the legislation explained the exception for claims subject to ORS chapter 656 that is included in the cap."

In conclusion, the court held that the "text of ORS 31.710(1), viewed in context, excludes from the noneconomic damages cap third-party claims by or on behalf of workers injured in the course of their employment...." In other words,



**Ryan McLellan**  
rmclellan@smithfreed.com

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**Fax:** 503.227.2535  
**www.smithfreed.com**

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111 SW 5th Ave, Suite 4300  
Portland, OR 97204





## Oregon Case Update



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the Court has determined that whenever a plaintiff is injured and has received or will receive workers' compensation benefits for that injury, any lawsuit they bring is not subject to Oregon's \$500,000 noneconomic damages cap.

View full opinion at: <https://cdm17027.contentdm.oclc.org/digital/pdf.js/web/viewer.html?file=/digital/api/collection/p17027coll3/id/7140/download#page=1&zoom=auto>



**Ryan McLellan**

[rmclellan@smithfreed.com](mailto:rmclellan@smithfreed.com)

**Phone:** 503.227.2424

**Fax:** 503.227.2535

**[www.smithfreed.com](http://www.smithfreed.com)**

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