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Tennessee Legislature Passes Major Tort Reform Legislation

On May 20, 2011, the Tennessee legislature passed sweeping tort reform legislation that includes caps on jury awards for non-economic and punitive damages in lawsuits. The Act, referred to as the "Tennessee Civil Justice Act of 2011," was one of Governor Haslam's top legislative priorities and is expected to be signed by him in the coming days. This alert summarizes some of its key provisions.

The centerpiece of this Act is the limits that will be placed on non-economic and punitive damages. Generally, this Act places a \$750,000 limit on the award of non-economic damages in most personal injury lawsuits and health care liability actions. These limits will not apply to catastrophic injuries such as spinal cord injuries resulting in paraplegia or quadriplegia, injuries necessitating amputation, injuries causing third degree burns over 40% or wrongful deaths of a parent leaving a surviving minor child or children. In these cases, the award of non-economic damages will be capped at \$1,000,000. The limitations on the award of non-economic damages contained in this Act will not apply where the defendant had intended to inflict serious physical injury, where the defendant altered or destroyed records with the purpose of avoiding or evading liability and where the defendant's judgment was substantially impaired by alcohol or drugs.

In addition to the limits placed on the award of non-economic damages, this Act will also limit the award of punitive damages in a civil action to an amount not to exceed the greater of an amount two times the total of compensatory damages awarded or \$500,000. Similar to the exceptions for the award of non-economic damages, these limits on punitive damages awards will not apply where the defendant had intended to inflict serious physical injury, where the defendant altered or destroyed records with the purpose of avoiding or evading liability and where the defendant's judgment was substantially impaired by alcohol or drugs.

Further, this Act makes various changes to the award of punitive damages in products liability cases. For instance, it provides that the seller of a product will not be liable for punitive damages, unless the seller exercised substantial control over the aspect of the product for which recovery is sought, the seller altered or modified the product and the alteration was a substantial factor in causing the harm for which recovery is sought or the seller had actual knowledge of the defective condition of the product at the time. Punitive damages will not be allowed in a civil action involving a drug or device if the drug which caused the harm was manufactured and labeled in accordance with the terms of an approval or license issued by the FDA or if the drug was sold over-the-counter and was generally recognized as safe and effective and as not being misbranded.

This Act removes the private right of action for any alleged unfair or deceptive act or practice involving the marketing or sale of a security as defined by the Tennessee Securities Act and charges the Attorney General and Reporter with enforcing the provisions of the consumer protection act related to deceptive acts or practices. In addition, this Act prohibits class action lawsuits to recover damages for an unfair or deceptive act or practice as defined by the Tennessee consumer protection act.

This Act revises where a civil action may be brought. Under this Act, where the defendant is not a natural person, a civil action will now be required to be brought in either the county where all or a substantial part of the events giving rise to the claim occurred, the county where the defendant's principal office in this state is located or the county where the defendant's agent for service of process is located, if the defendant does not maintain an office in this state.

The provisions of this Act will take effect on October 1, 2011, and will apply to all liability actions for injuries, deaths and losses covered by this Act which accrue on or after the effective date.

This alert is a summary of the Tennessee Civil Justice Act of 2011. If you would like a complete copy of the legislation, or have any other questions, please feel free to contact [Mandy Young](#) or [Junaid Odubeko](#) from Miller & Martin PLLC's [Government Relations Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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