

New Tort Reform Law Places Caps on Damages

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By **Tim Bomhoff**

Just the mere mention of the “McDonald’s coffee lawsuit,” and even the most casual follower of legal news can recite the basic details: An elderly woman spills a hot cup of coffee in her lap and sues the restaurant chain for \$20,000 to cover her medical costs. After McDonald’s offers a lesser amount to settle the claim, the matter is taken to court, where a district court jury in New Mexico awards the plaintiff compensatory damages of \$160,000 plus punitive damages of \$2.7 million.



While few people remember the actual details of the case or the fact that the award was significantly reduced by the trial judge, the case is often cited as the legal poster child for tort reform.

The Oklahoma Legislature recently took another step in the tort reform movement to limit the potential for “runaway jury” awards by enacting the Comprehensive Lawsuit Reform Act of 2009. Previous versions of tort reform were enacted in 2002, 2003 and 2004 with varying success, and later attempts to enact additional meaningful reform either stalled or were vetoed by the governor.

One notable provision of the new act specifically addresses the issue of caps on non-economic damages resulting from bodily injury. Commonly referred to as compensatory damages or “pain and suffering,” the term actually covers a broad range of harm, including loss of the benefits of family, companionship, care, assistance, attention, disfigurement, mental anguish and the broad category of “any other intangible loss.”

Except in cases involving wrongful-death actions or claims under the Governmental Tort Claims Act, the new law caps the amount of non-economic damages that may be awarded to plaintiffs in bodily injury claims at \$400,000, regardless of how many defendants there may be. For Oklahoma businesses concerned about the size of jury awards resulting from such claims, this is a welcome change, especially when considered along with the limits placed on punitive damages in the 2002 tort reform legislation.

It’s important for businesses to note, however, that these caps only apply in cases involving bodily injury. In most types of commercial business torts where damages are basically monetary or economic losses, the newly enacted damages cap has no application. Similarly, in a civil suit that involves both a claim for bodily injury non-economic damages as well as a claim for

economic damages, there is no cap on the amount of compensatory damages awardable to the plaintiff for economic loss.

The new law provides two main exceptions to the cap. First, in actions for professional negligence there is no limit on the amount of non-economic damages if both the judge and the jury find by clear and convincing evidence certain facts about the seriousness of the plaintiff's bodily injuries or the gravity of the defendant's tortious acts or omissions. The same exception applies to claims that do not involve professional medical evidence, except the judge in those cases has to find the requirements above apply by a "preponderance of the evidence" instead of "clear and convincing evidence."

While the new legislation provides meaningful limitations, there are numerous open/unanswered legal issues in the wake of the new act, including some likely constitutionality challenges given that earlier tort reform legislation was struck down by the Oklahoma Supreme Court on similar issues. The fact that this new act appears to have been the result of a bipartisan effort and clear efforts were made to address some previous constitutional challenges may reduce the possibility of it being struck down, but whether the new act and, in particular, the damages cap law survive a challenge remains to be seen.

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