

PUBLICATION

Litigation Alert for Businesses with Tennessee Operations

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On March 9, 2015, a Tennessee trial court struck down Tennessee's statutory limitation on the amount of non-economic damages recoverable in personal injury cases. The court held that the legislature's attempt to limit non-economic damages in personal injury cases violated Tennessee's constitutional guarantee of a right to trial by jury, an "inviolable" right which, at the time of the adoption of the Tennessee Constitution in 1796, included the common law right to have a jury determine the appropriate amount of compensatory damages.

Obviously, this case has potential significance for any business that operates in Tennessee, or that might be sued in Tennessee for personal injury. As of the date of this Alert, motions for an interlocutory appeal of the March 9, 2015 order have been filed with the trial court but have not been heard.

Baker Donelson has been monitoring this case closely. For more background and detail on this case, please read on.

In 2011, the Tennessee Legislature, carrying the banner of tort reform, enacted a limitation on non-economic damages recoverable by an injured plaintiff. The pertinent statute, T.C.A. § 29-39-102 (part of the Tennessee Civil Justice Act of 2011) limits non-economic damages suffered by each injured plaintiff (including derivative claims of a spouse or child) to \$750,000, except in cases of "catastrophic" injury. T.C.A. §§ 29-39-102 (a)(2), (c) and (e). The statute defines "catastrophic loss or injury" as spinal cord injury resulting in paraplegia or quadriplegia, multiple amputations of the hands or feet, extensive burns to the body or face, or wrongful death of a parent with surviving minor children, and limits the amount of non-economic damages for catastrophic injury to \$1 million. T.C.A. §§ 29-39-102 (c) and (d).

In a recent case arising in the Circuit Court of Hamilton County, *Donald M. and Beverly J. Clark v. Aimee L. Cain, AT&T Corp. and AT&T Mobility, LLC, and Robert E. Cooper, in his official capacity as Attorney General for the State of Tennessee*, Docket No.12C1147, Div. 4 (March 9, 2015), the trial judge, W. Neil Thomas III, issued a 24-page opinion declaring Tennessee's cap on non-economic damages unconstitutional. In essence, the court reasoned that the right to a jury trial in Tennessee is a fundamental constitutional right, and that the time-honored and traditional function of a jury at common law was to determine an appropriate remedy for personal injury as well as to determine the underlying facts. Applying a "strict scrutiny analysis" to the legislature's rationale for enacting the damages cap, the court could find no compelling state interest that superseded the fundamental right to jury trial, especially where the "compelling interest is declared to be merely an economic interest." (Op., p.16.)

Tennessee is not alone in limiting non-economic damages for personal injury. As of mid-2013, 39 states had established caps on non-economic damages. Courts have upheld such caps in 19 states and struck them down in ten states. (The latter number was nine, but Tennessee makes ten after *AT&T Corp.*, notwithstanding the decision was issued by a trial court.) Caps in 10 states remain unchallenged. Maron, *Statutory Damage Caps: Analysis of the Scope of Right to Jury Trial and The Constitutionality of Mississippi Statutory Caps on Noneconomic Damages*, 32 Miss. C. L. Rev. 109 2013-2014, p.110, and the Appendix thereto, *50 State Survey of Statutory Damage Caps*, p. 136.

Judge Thomas' ruling adopts constitutional arguments that have taken down damage caps in other states, and his decision will be perceived by many as a threat to tort reform in Tennessee.

Baker Donelson will continue to monitor the progress of this case closely. In the interim, please contact Baker Donelson Appellate Practice Chair Buck Lewis with questions or comments.