



LITIGATION

GOVERNOR SIGNS SWEEPING TENNESSEE TORT REFORM LEGISLATION

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On June 16, 2011, Governor Haslam signed the "Tennessee Civil Justice Act of 2011". The legislation, among other things, places "caps" on non-economic and punitive damage awards in personal injury civil suits. Below are the highlights of the new legislation.

Caps on Non-economic and Punitive Damage Awards

The focal point of the tort reform legislation was the capping of non-economic and punitive damage awards in personal injury lawsuits. Under the new law, there will continue to be no cap on economic damages, but non-economic damages will not be permitted to exceed \$750,000.00. The law further provides that punitive damages will not exceed two times the total amount of compensatory damages or \$500,000.00, whichever is greater. Punitive damages will be required to be proven with clear and convincing evidence.

There will, however, be exceptions to the caps. The cap on non-economic damages will rise to \$1 million if an injured party suffers a catastrophic injury, such as paraplegia or quadriplegia due to a spinal cord injury, sustains third degree burns on over 40% of their body, has an amputation of a hand or foot, or wrongfully dies leaving one or more minor child.

In comparison, the caps on non-economic and punitive damages will be completely eliminated in three instances: (1) where there was intent by the defendant to injure the plaintiff; (2) the defendant was under the influence of drugs or alcohol which resulted in their judgment being substantially impaired; or (3) the defendant concealed, altered or destroyed records in order to avoid liability.

Punitive Damage Awards in Products Liability Lawsuits

Under the new reform law, a products liability lawsuit will only be able to be maintained against a seller in certain situations which include: (1) if it had substantial control over the design, manufacture, packaging or labeling of the product; (2) altered the product; (3) provided an express warranty; (4) the manufacturer would not be subject to service of process in the State of Tennessee; or (5) the manufacturer has been declared to be insolvent by a Court.

Likewise, the seller of a product will not be liable for punitive damages except for where the seller had substantial control over the design or manufacture of the product, altered the product, or had actual knowledge of the product defect at the time it was sold.

Moreover, punitive damages will not be awarded where the manufacturer of a drug or device complied with applicable laws and regulations. In circumstances where the manufacturer has withheld material information or misrepresented information to regulators, punitive damages will be permitted.

Venue of Lawsuits

The law provides that if the defendant is not a natural person, then the lawsuit can only be brought in the county where all or a substantial part of the events giving rise to the claim took place, the county where the defendant has its principal office located within the state, or if there is no principal office in the state, the county where the person designated as the agent for service of process for the defendant is located.

Posting of Appeal Bonds

In addition, the legislation reduced the maximum amount of a bond for an appeal of a trial court verdict from \$75 million to the greater of either \$25 million or 125% of the judgment amount. In setting the bond amount, the court will not consider punitive damages unless there is some evidence that the defendant is dissipating assets. Further, the court will have the discretion to consider whether obtaining the bond would render the defendant bankrupt or insolvent.

Appeals on Class Actions

Under the new law, either party will have the ability to appeal an order granting or denying class certification "as of right," and all proceedings in the trial court will be stayed automatically pending appellate review. This changes the current rule which states that such appeals are discretionary.

Tennessee Consumer Protection Act

The private right of action based upon the marketing and sales of securities is eliminated, and the Attorney General will now be tasked with pursuing such actions on behalf of the citizens of the state. The



legislation also eliminates punitive damages under the Tennessee Consumer Protection Act. Further, the new law will eliminate class actions under the state's Consumer Protection Act, which merely codifies current case law in Tennessee.

Effective Date of the "Tennessee Civil Justice Act of 2011"

The provisions of the law will take effect on October 1, 2011 and will apply to injuries, losses and accidents which occur on or after the effective date of the legislation.

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