



# Busch v. McInnis Waste Systems, 468 P.3d 419 (Or. 2020)

Topics Covered: Professional Liability, Tort Reform

## **Outcome: Unfavorable**

### **Issue**

The issue in this case is whether the Oregon statutory cap on non-economic damages is constitutional.

### **AMA Interest**

The AMA supports caps on non-economic damages in medical malpractice lawsuits.

### **Case Summary**

Scott Busch was injured when he was struck by a garbage truck as he was crossing the street in downtown Portland, Oregon. As a result of his injury, his leg was amputated above the knee. Busch then sued the company that owned the garbage truck. The defendant company admitted liability for the injury and the case went to trial on the issue of damages. The jury found that Busch was entitled to \$3,021,922 in economic damages and \$10,500,000 in noneconomic damages.

After trial, defendant moved to reduce Busch's noneconomic damages to \$500,000 under Oregon's cap on non-economic damages (ORS 31.710(1)). The parties disputed whether such a reduction would violate the Oregon Constitution's Administration of Justice Clause, Ore. Const. Art I, § 10 ("[E]very man shall have remedy by due course of law for injury done him"). The trial court determined that the cap was constitutional in this case, granted the motion, reduced plaintiff's noneconomic damages to \$500,000—the amount of the cap—and entered judgment in that amount. Busch appealed.

The Court of Appeals noted that the Administration of Justice Clause invalidates a statutory limitation on damages if the statutorily allowable damages for a serious injury are not "substantial" in relation to the severity of that injury. The court went on to find that the trial court's reduction of the total damages left Busch with a "paltry" remedy and was therefore unconstitutional. It reversed the trial court's judgment and ordered that a new judgment be entered consistent with the jury's award.

The garbage truck company appealed to the Oregon Supreme Court, which affirmed the Court of Appeals opinion.

## **Litigation Center Involvement**

The Litigation Center, along with the Oregon Medical Association and the American College of Obstetricians and Gynecologists, filed an *amicus* brief to support the cap on noneconomic damages.

Oregon Supreme Court Brief