

## [Products Liability Law Daily Wrap Up, TOP STORY—DAMAGES—Or. App: State law cap on noneconomic damages axes \\$3M award against lumber company, \(Aug. 14, 2014\)](#)

Products Liability Law Daily Wrap Up

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By Tulay Turan, J.D.

A trial court erred in not applying the state's statutory cap on noneconomic damages to a construction worker's strict products liability claim against a lumber company, the Oregon Court of Appeals has ruled. The trial court also erred in entering a limited judgment on an indemnity claim against the company ([Rains v. Stayton Builders Mart Inc.](#), August 13, 2014, Ortega, D.).

**Background.** Kevin and Mitzi Rains filed an action against several parties seeking damages for injuries that Kevin, a construction worker, sustained when a board on which he was standing broke, causing him to fall 16 feet to the ground and resulting in paraplegia. Kevin filed claims for negligence and strict liability, and Mitzi filed a claim for loss of consortium.

After a partial settlement agreement between the Rains and Stayton Builders Mart (the company that supplied the board to the job site), the case proceeded to trial against Stayton and Weyerhaeuser Company (the third-party defendant that had provided lumber to Stayton). The jury returned a verdict for the Rains. The jury awarded Kevin \$5,237,700 in economic damages and \$3,125,000 in noneconomic damages, and Mitzi \$1,012,500 in noneconomic damages. After reducing the judgment to account for Kevin's comparative fault, the trial court entered a limited judgment for plaintiffs in the sum of \$7,031,400.

The trial court also determined that Stayton was entitled to indemnity from Weyerhaeuser and awarded Stayton its defense costs from Weyerhaeuser.

**Assignment of errors.** Weyerhaeuser raised 13 issues on appeal, and the court rejected three of them without discussion. Three other issues were not preserved. Two issues related to the parties' settlement agreement, including arguments that the trial court erred in failing to dismiss Stayton from the case as a defendant and in denying a request to admit the agreement into evidence. The appellate court rejected both of those arguments.

**Verdict form.** The court also rejected Weyerhaeuser's claim that the verdict form likely confused the jury because it allowed the jury to assign liability on the basis of negligence, as opposed to strict products liability. Weyerhaeuser claimed the form should have tracked the elements of a strict products liability claim and should have required the jury to answer a question on every element of such a claim. The court found that the jury instructions exhaustively instructed the jury on the elements of a strict products liability claim and application of the comparative fault statute. Thus, the trial court's use of a verdict form that required the jurors only to determine whether the parties were at fault was not in error.

**Noneconomic damages.** Regarding Kevin's claim for noneconomic damages, the court found that the trial court erred in denying Weyerhaeuser's motion to reduce his damages under ORS 31.710(1), which caps noneconomic damages at \$500,000 in most civil actions "arising out of bodily injury." The trial court found that application of the cap would violate Article I, section 17, of the Oregon Constitution, which guarantees a jury trial in civil actions for which common law provided a jury trial and also requires a jury to determine damages.

The appellate court found that a strict products liability claim differs in significant ways from a common-law negligence claim for a product defect. As such, the court wrote that it "cannot conclude that the legislature lacked authority, despite Article I, section 17, to define the right to recover for strict products liability actions, to decide who could recover, and to establish the nature of the damages that are recoverable."

**Indemnity claim.** The court also agreed with Weyerhaeuser that the trial court erred in entering a limited judgment for Stayton on its indemnity claim. Stayton did not meet the first element of a common-law indemnity claim, which is to “discharge an obligation owed to a third party.” Stayton did not prove that it had actually paid the Rains pursuant to the limited judgment against it and Weyerhaeuser or that its settlement agreement with Rains “bought peace” for Weyerhaeuser.

**Defense expenses.** The court rejected Weyerhaeuser’s argument that the trial court erred in awarding Stayton defense expenses against Weyerhaeuser in indemnity. Weyerhaeuser argued that the trial court could award defense costs only if it had “wrongfully” refused to defend Stayton. It also argued that Stayton’s tender of defense was untimely.

The court found that Weyerhaeuser’s cited authority did not establish that defense expenses are recoverable in indemnity only if the indemnity defendant wrongfully refused to defend the indemnity plaintiff. In addition, Weyerhaeuser did not cite to authority that supported whether a timely tender affects the trial court’s ability to award defense costs in the circumstances presented in this case.

Weyerhaeuser also challenged Stayton’s supplemental request for expenses. Because Stayton conceded that the trial court should not have awarded \$1,512 in appeal-related fees, the court reversed and remanded the general judgment for a reduction in that amount.

**Disposition.** The court reversed and remanded the limited judgment entered for the Rains against Stayton and Weyerhaeuser for the trial court to apply the statutory cap on noneconomic damages to Kevin’s strict products liability claim. It also reversed the limited judgment entered for Stayton on its indemnity claim.

The case number is [06C21040](#).

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Companies: Weyerhaeuser Co.; Stayton Builders Mart, Inc.

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