

“Permanent and Substantial Deformity”: What it Means and How it is Interpreted Regarding the Application of the Statutory Cap on Noneconomic Damages

By Phillip M. Sarnowski

Ohio law caps damages that can be awarded for pain and suffering (i.e., noneconomic damages) up to \$350,000 in tort claims unless a plaintiff can establish that she: (1) sustained a permanent and substantial physical deformity; (2) lost the use of a limb; (3) lost a bodily organ system; or (4) sustained a permanent physical functional injury that prevents her from being able to independently care for herself and perform life-sustaining activities. Courts, however, have struggled with the question of whether a plaintiff qualifies under one of these four exceptions but a recent decision has given some helpful guidance on this question and has affirmed the high standard for these exceptions. *Poteet v. MacMillan*, 12th Dist. Warren No. CA2021-08-071, 2022-Ohio-876 (Mar. 21, 2022).

In *Poteet*, the plaintiff was injured in a motor vehicle collision, sustaining a leg and ankle fracture that required two surgeries, which resulted in scars, a malunion, and a plate in her ankle. The trial court denied a motion for directed verdict on the application of the statutory cap on noneconomic damages, instructing the jury that the plaintiff sustained a permanent and substantial deformity even though there was conflicting testimony on the issue. The court of appeals reversed that ruling, holding that the court should have granted the defense’s motion on the application of the caps as a matter of law.

The plaintiff argued on appeal that the screws and plate in her ankle resulted in a permanent and substantial deformity but the court rejected this argument, holding that “there was no evidence presented that at the time of trial that Poteet suffered a specific deformity, or that she has a certain deformity that is substantial in nature.” The court recognized the “supreme court’s high standard rooted in the statute’s text” and held that the “key point is that a deformity must be visible or noticeable. A metal plate and screws are per se not a deformity, as a “deformity” is a characteristic of the subject being deformed (in this case the person), rather than a foreign, internal, unobservable object.”

This holding properly applies the statutory cap on noneconomic damages and correctly holds that only severe and catastrophic injuries rise to the level of the exceptions to the statute as a matter of law. Knowing about important decisions like *Poteet* can make a crucial difference when arguing about whether the statutory cap will apply so it is important to retain counsel that stays informed on these issues.

If you would like more information on this or other issues relating to tort claims, please contact any of the listed attorneys.

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