



Case Law Update 2018

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Agenda

- Tort Caps and Trends
- The Hot List
- Law Enforcement Cases
- Recent Member Jury Trials
- Municipal & Employment Cases
- Q & A




Current Tort Caps




Current Tort Caps:

New Caps (adjusted annually):

- State & local property damage: \$119k / \$596k
 - Local personal injury/death: \$727k / \$1.454 mil
 - State/OHSU personal injury/ death: \$2.181 mil / \$4.363 mil
- These new limitations become effective on July 1, 2018, and apply to all causes of action arising on or after July 1, 2018, and before July 1, 2019.

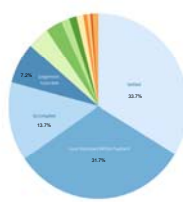


Liability Litigation Results

All Time

1K Litigated Claims

Settled	463
Case Disposed w/Out Pay.	427
To Complete	185
Judgements - Favorable	97
Dismissed	53
Mediation - Resolved	40
Attorney Case Closed w/o Lit.	25
Judgements - Unfavorable	18
Arbitration Favorable	17
To Partial	9
Arbitration Not Favorable	9
Appeal	5
Other	14



Total
1,346

54% all litigation
resolved w/o
payment



POWERED BY DOMO | reported 31 Jul 2018



How The Claims Break Down

Last 5 Years

8K Claims

CORRECTIONS	11,813,356.44
ADMINISTRATION	10,551,623.87
LAW ENFORCEMENT	7,214,252.29
UTILITIES	4,342,979.89
VEHICLES	3,531,084.55
PRISONERS AND INM.	855,551.8
ROADWAYS	787,353.92
ENVIRONMENTAL	587,258.47
PLUMBING AND	545,084.17
ELECTED AND	575,765.18
REGULATION	253,169.88
SOCIAL SERVICES	191,817.33
Other	575,412.29



Total
40,913,534.21



POWERED BY DOMO | reported 16 Aug 2018



Liability Claims by Major Departments – Top 10

	Departments	Claim Total Paid
1	CORRECTIONS	\$ 11,356,296
2	ADMINISTRATION	\$ 10,594,558
3	LAW ENFORCEMENT	\$ 7,076,803
4	UTILITIES	\$ 4,383,857
5	VEHICLE OPERATION (Non-Transit)	\$ 4,064,030
6	PREMISES AND FACILITIES	\$ 879,008
7	ROADWAYS, WALKWAYS, BRIDGES AND TUNNELS	\$ 789,625
8	EMERGENCY SERVICES	\$ 597,078
9	PLANNING AND RESOURCE MANAGEMENT	\$ 556,684
10	ELECTED AND APPOINTED OFFICIALS	\$ 406,562



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The Hot List: Newest Cases



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Ordinance Bans Camping on Public Property

■ *Martin v. City of Boise*

- 9th Circuit held that 8th Amendment prohibition of cruel and unusual punishment prohibits criminalization of sleeping on public property if person is homeless with no alternative shelter.
- City did not enforce ordinance if all shelters were at capacity
- Some shelters had maximum stay rules
- Don't criminalize sleeping outside at night when there's no where else to go. Civil fines or community service if can't pay.



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Oregon Appellate Court Narrows Rec Immunity

▪ *Ortega v. Martin*

- For Recreational Immunity to apply, the government entity must have the authority to open or close recreational use of the land in question.
- Teenage surfer collided with a dory boat of the coast of Pacific City, severing his arm, which was surgically reattached.
- Claimed State failed to provide “adequate warnings”
- Court reasoned that oceans and beaches are “public trust lands” that cannot be closed. So no quid pro quo.
- Court did confirm tort cap provided adequate remedy



U.S. Supreme Court: Union Agency Fees

▪ *Janus v. AFSCME*

- USSC struck down union’s ability to collect “agency fees” or “fair share fees” from non-union members of bargaining unit.
- Workers must take the affirmative step of opting into union membership, rather than opting out.
- Leaves open the possibility of a fee-for-service model:
 - ☐ Unions could charge nonmembers for specific duties, like representing them in grievance hearings.



ADA Career Plaintiffs

▪ *Richard Wagner v. Josephine County*

- Ohio resident who has filed 19 ADA lawsuits for allegedly non-compliant facilities, when advertised as ADA compliant.
- If plaintiff recovers \$1, court awards all plaintiff’s attorney fees
 - ☐ Likely \$200k to \$300k+



New Case Law on Law Enforcement



Court of Appeals & Supreme Court Decisions

- ***County of Los Angeles v. Mendez***
 - Supreme Court rejected 9th Circuit's "provocation" rule.
- ***White v. Pauly***
 - Supreme Court affirmed Qualified Immunity for officer who arrived late and shot plaintiff because officer was entitled to assume that earlier officers had followed proper procedures.
- ***Carpenter v. United States***
 - Supreme Court decision on whether warrant is needed to seize and search cell phone tower data.



Court of Appeals & Supreme Court Decisions

- ***Entler v. Gregoire***
 - Ninth Circuit ruled that prisoner's 1st Amendment rights violated when disciplined for threatening prison official with criminal charges.
- ***Crime Justice & America, Inc. v. Honea***
 - Ninth Circuit ruled that jail could ban paper magazine where the jail presented actual evidence non-personal paper created security problems and jail had 31 electronic kiosks throughout the jail to access electronic version of magazine.



Court of Appeals & Supreme Court Decisions

▪ *United States v. Sanchez-Gomez*

- Ninth Circuit ruled that criminal defendants have constitutional right to be free from shackles in courtrooms absent individualized decision of compelling government purpose and shackles were the least restrictive means of courtroom security. (*U.S. Supreme Court accepted review.*)

▪ *Jones v. Las Vegas Metro Police Dept.*

- Ninth Circuit ruled that repeated and simultaneous use of tasers (dart and drive stun) for over 90 seconds was unconstitutional.



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Court of Appeals & Supreme Court Decisions

▪ *Sharp v. County of Orange*

- Ninth Circuit ruled that arrest warrants don't create categorical authority to detain home occupants like search warrants.
- Ninth Circuit also ruled that an otherwise lawful detention violated the 1st Amendment where the detention was prolonged because of plaintiff's argumentative speech.

▪ *Zion v. County of Orange*

- Ninth Circuit denied Qualified Immunity to officer who continued to shoot prone suspect and then stomped on him.



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Court of Appeals & Supreme Court Decisions

▪ *Longoria v. Pinal County*

- Ninth Circuit ruled that officer cannot use a single frozen frame from an iPhone video to justify a use of force where the officer would not have perceived the danger in real time.



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Recent Member Jury Trials



Recent Member Jury Trials

- *Slaughter v. City of Tigard*
 - Jury verdict for officers who took disgruntled 75 year-old bank customer to the floor after negotiating with him for 30 minutes to leave the bank premises



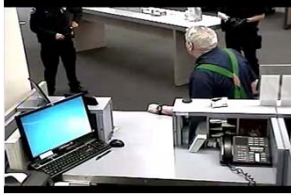
Slaughter v. City of Tigard: Good Police Work

- The police officers exercised restraint and great patience in dealing with elderly disgruntled bank customer who was verbally abusive and physically threatening to both bank employees and the officers, and who refused to leave the bank despite multiple requests to do so.
- Situation provides a good example of de-escalation techniques and progressive use of force tactics.



Slaughter v. City of Tigard: Good Police Work

- Take down controlled and properly performed:



Recent Member Jury Trials

▪ *Homeowners v. City Public Works*

- Jury verdict for oceanfront homeowners on coast after water main break. 9pm on Christmas Eve.
- Water main inspected one week prior; no problems.
- City responded in 20 min. Verified break, then got tools. All valves closed in 1.5 hrs.
- City did nothing wrong; homeowner didn't either
- Jury will not stick a homeowner with the bill. Period.



New Municipal & Employment Cases



Ninth Circuit Court of Appeals

- *Guido v. Mount Lemon Fire Dist.*
 - Age Discrimination: ADEA applies to all government employers no matter how many people it employs.
- *Zetwick v. Co. of Yolo*
 - Hostile Workplace: Cumulative effect, not final event



Oregon Supreme Court & Court of Appeals

- *Skille v. Oregon State Hospital*
 - Tort Claim Notice Period: Period extended where security transport employee groomed inmate with mental impairment to provide sexual favors.
- *OHSU v. Oregonian*
 - Public Records Request/HIPAA: Providing *The Oregonian* a list of tort claims filed against OHSU would have required disclosing patient names and the medical services received. Disclosure not required.



Oregon Supreme Court & Court of Appeals

- *Multnomah County Sheriff's Office v. Edwards*
 - Veterans' Preference: If a public employer does not give applicants numerical scores, the entity still must create a "discernible plan" for providing a preference to veteran applicants. "Ad hoc" system does not suffice.
- *Folz v. ODOT*
 - Whistleblower: HR representative did not engage in whistleblower activity by recommending lesser discipline for intoxicated employee





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A close-up photograph of a white telephone keypad. The buttons are dark with white numbers and symbols. The keypad is part of a larger white telephone unit.

A small circular logo with "CIS" inside, and below it, the text "citycounty insurance services" and "cisoregon.org".
