

Trends in Damages

by

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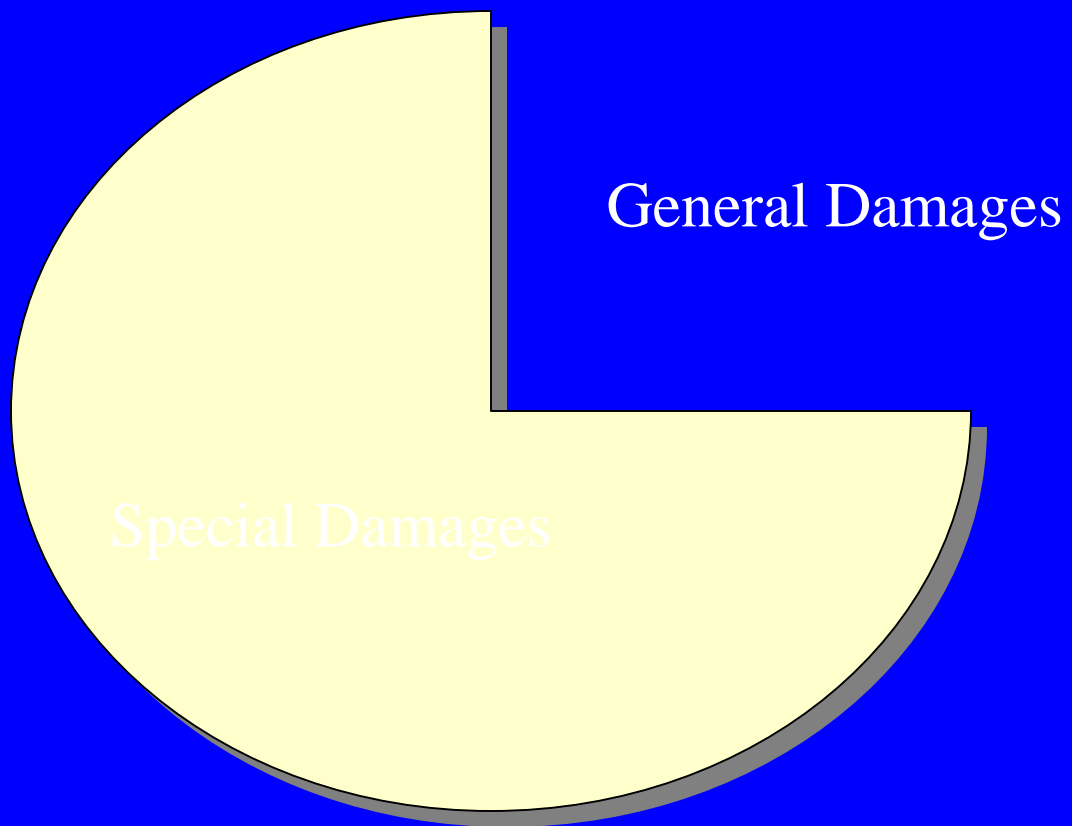
Overview

- Compensation
- General Damages: The Cap
- Trends in General Damage Awards
- Trends in Special Damage Awards
- Aggravated / Punitive Damages
- Q & A

Compensation

- Non-Pecuniary (“General”) Damages
 - Pain and suffering
 - Loss of guidance care & companionship
- Pecuniary (“Special”) Damages
 - Actual losses
 - Income loss; out-of-pocket expenses

Compensation



General Damages: The Cap

- The Supreme Court “trilogy”
- *Lee v. Dawson* Charter challenge
- Non-bodily injury cases

GENERAL DAMAGES UPPER LIMIT INCREASES 1999-2007

- **1978** - **\$100,000**



- Dec. 1999 - \$266,746
- Dec. 2000 - \$275,359
- Dec. 2001 - \$277,273
- Dec. 2002 - \$288,038
- Dec. 2003 - \$293,780
- Dec. 2004 - \$300,000
- Dec. 2005 - \$306,459
- Dec. 2006 - \$311,483
- **Aug. 2007** - **\$318,234**

Index Annual

Change

100.0

103.2

103.9

108.0

110.1

112.5

114.9

116.8

119.3

3.23%

0.70%

3.88%

1.99%

2.12%

2.15%

1.64%

Trends in General Damages Awards

- Influences:
 - Jury vs. non-jury cases
 - “Functional” approach
 - Mediation / ADR
 - Deductibles in auto cases
 - Geography

Trends in General Damages Awards

- Whiplash injuries and strains
- Chronic pain and fibromyalgia
- PTSD and depression
- Broken bones
- Head injuries
- Loss of senses
- Family Law Act

“Special” Damages

- Past Income Loss
- Future Income Loss
- Loss of Competitive Advantage
- Loss of Housekeeping / Homemaking
- Loss of Interdependent Relationships
- Future Care Costs

Loss of Competitive Advantage

- a.k.a.:
 - Loss of economic opportunity
 - Loss of earning capacity
 - Loss of chance
 - Lost years
- Contingencies

Future Care Costs

- Includes:
 - Nursing care
 - Therapies / treatment
 - Assistive devices
 - Vocational retraining
 - Home modifications
 - Vehicle modifications
 - Medications
 - Case management

- Contingencies

- Remarriage
- Illness / death
- Employment / unemployment / strikes
- Early retirement
- Deterioration of pre-existing problem

Aggravated & Punitive Damages

- Overview
- Aggravated damages
- Punitive Damages
- Cases

Q & A