LAW UPDATE:
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WASHINGTON PLAINTIFF SUED OREGON CORPORATION FOR ACCIDENT IN CALIFORNIA. WHAT STATE'S LAW APPLIES?

PLAINTIFF CAN RECOVER LOST PROFITS FROM CANNABIS BUSINESS

WILLIAM TARR v. USF REDDAWAY, INC., US Dist. Court, Oregon, February 2, 2018

> A Washington plaintiff sues an Oregon corporation for an accident that occurred in California. If defendant's employee, who is not a party to the lawsuit, is a California resident, California law will apply.
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> Plaintiff may recover lost profits from his wholesale cannabis business despite the fact that cannabis is illegal under federal law.

The determination of which state's law applies to a case can have a tremendous effect on the case. States apply different laws as to the standard of care, comparative or contributory fault and calculation of damages.

In *Tarr v. USF Reddaway, Inc.*, the plaintiff, a Washington resident, sued an Oregon corporation for damages caused in a trucking accident that occurred in California. By successfully arguing that California law applies, plaintiff was able to avoid Oregon's $500,000 limit on noneconomic damages. Plaintiff also sought economic damages for lost profits to his cannabis business. The US District. Court ruled that even though marijuana is illegal under federal law, and plaintiff's cannabis wholesale business is a criminal enterprise under federal law, plaintiff may seek and recover lost business profits because the activity is permitted under state law.

Facts:

Plaintiff's son, Connor, was killed when the car he was a passenger in was struck from behind by a semi-truck driven by defendant's employee. The accident occurred in California. Plaintiff is a Washington resident. Defendant is an Oregon corporation.

The issues before the trial court were:

1. What state's law applies?
2. May plaintiff recover economic damages based upon projected profits from his cannabis business?

California Law Applies:

Oregon has a $500,000 cap on noneconomic damages, such as pain and suffering. California does not have this cap. Defendant argued Oregon law applies. To avoid this $500,000 cap plaintiff argued California law applies.

Because plaintiff and defendant live in different states, and applying the laws of each state would produce a different outcome, the court was obligated to follow Oregon's "Choice of Law" statute, ORS 15.440, to determine which state's law applies.

ORS 15.440 requires the court to apply the law of the state where the incident and the resulting injury occurred, so long as either the "claimant" or "tortfeasor" are domiciled in that state. Neither plaintiff nor defendant is domiciled in California where the incident occurred. However, the trial court was obligated to apply California law because defendant's employee whose conduct caused the injury resides in California.

The court applied a theory of *respondeat superior* to make the Oregon employer liable for the negligent acts of its California based employee. Therefore, in a *respondeat superior* action filed against an employer for injury caused by an employee, both the employer and the employee are considered to be "persons whose conduct caused the injury." The Oregon cap on noneconomic damages does not apply.

Sale of Cannabis as Economic Damages:

Defendant claimed Tarr cannot recover economic damages for his cannabis business because it is an "illegal operation" under federal law (not state law). Defendant drew a comparison to a 1956 case involving an illegal bootlegging operation where one partner was not allowed to recover lost income from this illegal business. Defendant argued that Oregon's legalization of cannabis under state law does not preclude criminal prosecution by the federal government due to continued illegality under federal law. Defendant supported this contention by pointing out that a cannabis business cannot avail itself of bankruptcy protection and is not entitled to banking services through a Federal Reserve account.

The court disagreed, noting that despite federal prohibition, the business operation was completely legal under state law. Therefore, plaintiff was entitled to recover economic damages based on projected profits from the family cannabis business.

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