Reproduced by permission. ©2009 Colorado Bar Association,
38 *The Colorado Lawyer* 105 (August 2009). All rights reserved.

Splitting Punitive Damages With the State

Split-Recovery Statutes Do More Harm Than Good

by Lee Katherine Goldstein

In today's society, punitive damages provide a vital means of punishing and deterring wrongful conduct. In our world of lax regulation and corporation-friendly legislation, punitive damages provide a mechanism for jurors to punish defendants that have crossed the line by engaging in conduct that society will not tolerate when the regulators and criminal justice system fail to do so. Punitive damages:

> elevate the jury as a responsible instrument of government, discourage[ ] private reprisals, restrain[ ] the strong, influential, and unscrupulous, vindicate[ ] the right of the weak, and encourage[] recourse to and confidence in the courts of law by those wronged or oppressed by acts or practices not cognizable in or not sufficiently punished by the criminal law.[1]

Punitive damages have a long and well established history in American jurisprudence. Punitive damages were recognized in common law as early as 1763, and the practice of awarding punitive damages was well recognized when the U.S. Constitution was adopted.[2] Punitive damages are intended to be punishment of the wrongdoer and an example to others to deter similar conduct.[3] As explained by the Wisconsin Supreme Court, punitive damages serve an important and unique role in our society:

> Suffice it to say that whatever shortcomings the award of punitive damages may have, it must be remembered that it has the effect of bringing to punishment types of conduct that though oppressive and hurtful to the individual almost invariably go unpunished by the public prosecutor.[4]

Continued on page 106.

An Idea Whose Time Has Come (Again)

by Doug McQuiston

In the world of civil litigation, there are rare fact patterns that might justify the award of punitive damages. However, even where punitive damages may be warranted in the "micro" context of a specific case, their effect in the "macro" context tends to be arbitrary, unpredictable, and inconsistent. Too often, a punitive claim is made not on its merits, but as a tactical wedge between a defendant and its insurer to extort a higher compensatory settlement.

Worse, in many cases, the punitive claim is used as a trial tactic to insert otherwise inadmissible evidence into the plaintiff's case in an unbifurcated trial, knowing the actual punitive damages claim for which such evidence might be arguably probative will not survive a motion for directed verdict. Thus, the inflammatory evidence introduced as probative of the punitive claim unfairly ramps up the jury's temper, resulting in an unfairly skewed compensatory award. In their unguarded moments, the more candid of my colleagues on the plaintiff's side have admitted as much to me.

It can be argued that the corrosive effect of punitive damages exceeds any positive societal impact. U.S. Supreme Court Justice David Souter recognized this when he noted in *Exxon Shipping Co. v. Baker* that "punitive damages overall are higher and more frequent in the United States than they are anywhere else."[1] Many business studies have shown that punitive damages awards (along with excessive verdicts in general) operate as a drag on our domestic economy, a hidden "tax" on the cost of virtually every product made or sold in America.[2]

Continued on page 107.

Lee Katherine Goldstein is Of Counsel with Fairfield and Woods P.C., where she focuses on commercial and civil litigation—(303) 894-4407, lgoldstein@fwlaw.com.

Doug McQuiston has practiced in the field of insurance defense litigation for more than twenty-seven years—(303) 843-4921, dougmcquiston@yahoo.com. The ideas and thoughts expressed in this article are those of the author and not those of any other person or entity.

Point/Counterpoint articles provide an open forum for the expression of ideas and address issues that are substantially related to the law, to the practice of law, or to lawyers (not matters of general interest). Any CBA member wishing to submit a Point/Counterpoint article should work with another CBA member to provide a companion article that argues for a significantly different conclusion. For further information and writing guidelines, to discuss topics in advance, or to get help finding someone to write an opposing viewpoint, contact Point/Counterpoint Coordinating Editor Fred Burtzos at fred.burtzos.gdz0@statefarm.com.

Split-Recovery Statutes Do More Harm Than Good

Punitive damages statutes recognize the principle that certain types of violations will not be prosecuted unless the injured party's judgment is increased by the equivalent of punitive damages.[5]

In his counterpoint article, my colleague Doug McQuiston has described the difficulties encountered by the courts in controlling punitive damages awards against the dangers of excessiveness and unpredictability. However, his proposal to require plaintiffs to split awards with the state will not decrease the amount or frequency of these awards or render them any more predictable than they currently are.

Split-Recovery Statutes

Numerous states have enacted so-called "split-recovery" statutes, which provide for some percentage of every punitive damages award to be paid to the state rather than to the plaintiff.[6] The seemingly innocuous idea of diverting some or all of a punitive damages award to the state not only fails to achieve the often stated goal of preventing a windfall to the plaintiff, but also fails to achieve the driving force behind such statutes—the desire to reduce the size and frequency of punitive damages awards.

The "Windfall" Myth

First, the myth that plaintiffs who receive a punitive damages award necessarily receive a "windfall" must be dispelled. People unfamiliar with the intricacies of personal injury litigation fail to appreciate the many obstacles that plaintiffs in Colorado face in recovering the full measure of their damages—all in the name of "tort reform." These obstacles include statutory limits on recovery of damages for pain and suffering,[7] statutory limits on recovery of damages in medical malpractice cases,[8] insolvency of responsible parties combined with *pro rata* fault statutes,[9] and limitations on the available amount of coverage under insurance policies.

In addition, once the award is obtained, the recovery is eroded further by statutory and contractual claims, including attorney fees and litigation costs, uncovered medical expense claims, insurance subrogation claims, and Medicare[10] and Medicaid[11] claims. Although punitive damages are not intended to be compensatory, as a practical matter, an award of punitive damages sometimes may be the only way for plaintiffs to actually recover the full cost of their injuries. Split-recovery statutes provide yet another means to deprive plaintiffs recovery of all of their damages and to balance the hardships plaintiffs endure in the litigation process.[12]

Additional Shortcomings

Split-recovery statutes also fail to achieve the goal of reducing the size and frequency of punitive damages awards. The idea behind these statutes is that the plaintiff's inability to receive the portion of

Continued on page 108.

An Idea Whose Time Has Come (Again)

Justice Souter recognized a problem with punitive damages claims beyond their frequency: "[T]he real problem, it seems, is the stark unpredictability of punitive awards."[3] That unpredictability was a major factor in the Court's ruling that a 1:1 ratio of punitive damages to compensatory damages is, in virtually all cases, a "constitutional upper limit."[4]

Unpredictability is especially troubling because it means there is no discernible standard at the state or national level as to what conduct is "bad enough" to warrant such an award. As a result, any measurable deterrent effect is negligible. There is no practical way for individual or corporate defendants to regulate their behavior to stay shy of "the line," because the line is constantly moving.

Even on the plaintiffs' side, this unpredictability hurts. Some deserving litigants get nothing, whereas others get a windfall that, by its definition, does not constitute "damages."[5] The inherent inconsistency and unfairness of punitive awards has given rise to the phrase "the litigation lottery."[6] That perception of fickleness and unpredictability does nothing but undermine the public's respect for the law, corroding the public's belief that the civil justice system is a just arbiter of disputes.

Offering a Solution

My colleague Lee Goldstein has a point when she contends in her article that Colorado already has taken steps to reduce the over-assertion of punitive damages claims and to restrain the runaway amount of such awards. She also has a good idea when she proposes that courts should routinely bifurcate those exemplary damages claims that survive motions for summary judgment or motions to dismiss from the case in chief. However, an argument can be made that these measures don't go far enough. Shouldn't there be a way to allow the claim to be asserted (in the rare cases to which it may apply) and at the same time address the corrosive litigation lottery effect?

My solution is to re-implement a split-recovery statute in Colorado whereby the punitive damages award would be divided equally among the plaintiff, his or her attorney, and the state. Splitting the award with the state would put at least some of the punitive damages funds to a more constructive public use and would sand down the arbitrariness a bit.

My colleague argues that such a statute would neither reduce the frequency of punitive damages claims nor make their award more predictable. I will accept the premise up to a point. I think an argument can be made that if plaintiffs and their counsel knew they would be sharing any possible exemplary damages award with a state fund—and thus would not "net out" as large a potential jackpot as they had planned—they would not bother with the claim except in the most egregious circumstances.

As part of the statutory package already in place to restrain punitive damages, the split statute might well have the effect of reducing the marginal assertion of punitive damages claims, particularly the "tactical" use of the claim where it is not justified. Only the most egregious fact patterns would justify the one-third "overhead" of the split levy. That would at least help assure that the assertion of punitive damages claims would be less frequent and more predictable.

Smoothing Out the Rough Spots

The primary purpose for the split statute, though, would be to address the very problems my colleague Lee Goldstein points out in her article. In attempting to dispel what she calls the "windfall" myth, she writes that "an award of punitive damages sometimes may be the only way for plaintiffs to actually recover the full cost of their injuries." That's exactly my point—though perhaps not in the way Goldstein intends. She argues that the successful punitive damages claimant gets to use the punitive award as a revenue enhancer to help offset such things as his or her lawyer's contingency fee, a Medicaid or Medicare lien, or the effects of one or more of Colorado's damages caps.

Although that may be good for the lucky lotto winner who hits on a punitive claim, how is it fair? The winner gets his or her payoff, but what about the hundreds of equally deserving plaintiffs who are stuck with the same shortfalls, tort reform caps, and Medicaid liens my colleague laments? What does the winner's punitive damages check do for them? How does their shortfall get "balanced out" merely because some other guy's lucky number popped up in the punitive damages keno game?

When Lee Goldstein argues that a split statute would work to deprive otherwise deserving plaintiffs of full compensation, she has it backward. The statute I propose would use a part of the punitive damages award to provide a revenue stream for a quasi-public fund that could then be used, via grants to deserving but undercompensated claimants, to do exactly what Goldstein wants—"balance the hardships plaintiffs endure in the litigation process." The lucky punitive plaintiff would still get to keep a third of the award (after giving a third to his or her lawyer, a "split" with which my colleague apparently has no issue).

Examining the "Unintended Consequences"

My colleague worries too much about the risk of unintended consequences wrought by a split statute. She contends that if jurors were aware that a third of any punitive award goes to the state, they might be tempted to award punitive damages where otherwise they would not, to enhance state revenue. Worse, the Attorney General might try to join in on civil suits with exemplary damages claims, as a hungry co-plaintiff eager for his or her chance at the trough.

I believe neither fear is justified. First, I suspect jurors would not embrace the role of *de facto* tax collector. If the emotional appeal behind the average punitive damages argument doesn't sway them, they likely won't be moved to an award by their knowledge that the state might get a cut. Any fears along those lines could be addressed by assuring that evidence of a potential state interest in the award is *per se* inadmissible, and that the juries are instructed as to the strict procedures they must follow to return a punitive damages verdict based solely on the evidence.

As for our Attorney General and his or her assistants, I suspect that particular branch of our state government already has more than enough to do. Any fear that they would see their potential one-third cut of a punitive damages award as an irresistible oppor-

Continued on page 109.

Split-Recovery Statutes Do More Harm Than Good

the award representing punitive damages will make him or her less likely to pursue punitive damages claims. This may not be true. Commentators believe that many plaintiffs will continue to pursue these claims out of a desire to punish the defendant and deter similar conduct in the future, as well as out of the potential for punitive damages claims to increase the settlement value of the case.[13]

These statutes not only fail to deter plaintiffs from pursuing punitive damages, but also may increase pursuit of damages directly by the states.[14] Split-recovery statutes provide the states an interest in furthering the plaintiff's lawsuit.[15] State attorneys general may attempt to intervene in private civil actions to pursue the punitive damages aspect.[16] In addition, state regulators may piggyback on civil litigation as an additional means of regulation.[17]

Moreover, allowing punitive damages awards to become additional revenue to the state may push lawmakers and judges toward loosening laws on recovery of punitive damages.[18] State citizens who become jurors also may be more inclined to award punitive damages, knowing that the damages will provide additional revenue to the state. Commentators suggest that jurors are more reluctant to award punitive damages when they believe that the damages will provide a windfall to a single plaintiff.[19] Knowing that the money will be used for broader societal good—for example, by compensating many victims or funding education and highway projects—may make the awards more palatable to jurors.[20] Although most states that enact these laws provide that jurors are not to be informed of the damages allocation to the state, we should not presume that jurors are ignorant of these laws.

Commentators also assert that split-recovery statutes present a whole host of additional problems. For example, they have the potential to create a conflict of interest between lawyer and client[21] and may present additional constitutional challenges to punitive damages awards by both plaintiffs and defendants.[22]

Moving Beyond Split Recovery

If limiting punitive damages awards is a laudable goal, there are better ways to meet this goal than through split-recovery statutes.[23] Colorado already has in place one of the most effective mechanisms for limiting the size of punitive damages awards—a statutory cap on the amount of the judgment that may be recovered by the plaintiff.[24] Concerns over the impact at trial of arguments and evidence relating solely to punitive damages can be met by bifurcating the proceedings into separate trials on liability and punitive damages. Split-recovery statutes will not effectively limit the size of punitive damages awards and may in fact cause such awards to be more frequent, larger, and more unpredictable. Split-recovery statutes are an idea whose time has passed.

Notes

1. *Wangen v. Ford Motor Company*, 97 Wis.2d 260, 294 N.W.2d 437, 448 (Wis. 1980).

2. *Kirk v. Denver Publishing Company*, 818 P.2d 262, 266 fn.5 (Colo. 1991) (*en banc*).

3. *Seaward Construction Company, Inc. v. Bradley*, 817 P.2d 971 (Colo. 1991).

4. *Wangen, supra* note 1 at 445, *citing Kink v. Combs*, 28 Wis.2d 65, 135 N.W.2d at 798 (Wis. 1962).

5. *Id.*

6. Alaska, California, Georgia, Illinois, Indiana, Iowa, Missouri, Oregon, and Utah have enacted split-recovery statutes. *See* Alaska Stat. § 09.17.020(j) (2004); Cal. Civ. Code § 3294.5(b) (2006); Ga. Code Ann. § 51-12-5.1(e)(2) (2000); 735 Ill. Comp. Stat. Ann. 5/2-1207 (2003); Ind. Code Ann. § 34-51-3-6 (1999); Iowa Code Ann. § 668A.1(2) (1998); Mo. Ann. Stat. § 537.675(g) (2005); Or. Rev. Stat. § 31.735 (2003); and Utah Code Ann. § 78B-8-201 (2004). Colorado's statute, CRS § 13-21-102(4), was declared unconstitutional by the Colorado Supreme Court in *Kirk*, *supra* note 2.

7. CRS § 13-21-102.5. Damages for pain and suffering are meant to compensate a plaintiff for intangible loss to his or her quality of life. Although these losses are hard to value, it is indisputable that they exist and are worthy of compensation. The statutory cap imposed on these damages is arbitrary because it is unrelated to the plaintiff's actual losses.

8. CRS § 13-64-302.

9. CRS § 13-21-111.5.

10. Medicare as Secondary Payer Statute, 42 U.S.C. § 1395y(b)(2)(A).

11. Medicaid Recovery Statute, CRS § 25.5-4-301.

Continued on page 110.

An Idea Whose Time Has Come (Again)

tunity to horn in on private civil suits could be addressed by providing in the split statute that the state has no interest in any such claim until an award is made, and no standing to pursue the claim itself.

My colleague also argues that split-recovery statutes generate the potential to create a conflict of interest between lawyer and client. Really? How is it any more of a conflict that one-third of any potential punitive damages award must be paid to the state (before judgment is entered), than it is that one-third of the compensatory award must be paid to the plaintiff's attorney out of the proceeds of any award or settlement? The contingency fee has historically been accepted in American civil jurisprudence despite the obvious potential for conflict, and the plaintiff's bar has reconciled quite well to it.

I doubt there would be any wringing of hands about the potential for conflict inherent in a split statute. The state has no interest in the suit and no standing to press for the award, so no conflict could be argued to exist. The best way to look at a split statute is as a 33 percent tax on punitive damages awards.

Legal Justification for a Split Statute

Despite my colleague's game effort at convincing us otherwise, punitive damages are not really "damages" at all. As the Supreme Court has told us on more than one occasion, punitive awards are not intended to compensate the tort victim.[7] They form no part of the injury or property represented by a claim for compensatory damages, because they are not intended to make the plaintiff whole. Then why does a plaintiff get to keep an entire punitive award?

I'm clearly not the first person to wonder this, given that nine states—Alaska, California, Georgia, Illinois, Indiana, Iowa, Missouri, Oregon, and Utah—currently have some form of a split statute. In fact, Colorado had the idea to enact a split statute more than twenty years ago. However, unlike the other states' statutes, Colorado's split statute failed to pass a Supreme Court challenge, as discussed below.

The Kirk *Conundrum*

In 1986, the Colorado legislature passed sweeping changes to tort law. Among them were changes to the punitive damages statute. One of the more controversial provisions called for one-third of any punitive damages award to be paid to the state's general fund.[8] The legislature knew that punitive damages in Colorado are strictly creatures of statute; they did not exist at common law.[9] Thus, the legislature concluded, a punitive award does not necessarily "belong" to the victim of a civil tort any more than a criminal fine "belongs" to the victim of a crime.

It took only five years after the passage of the one-third split provision for the Colorado Supreme Court to get a chance to smack it around a little. In *Kirk v. Denver Publishing Co.*,[10] the majority held that the provision was an unconstitutional "taking" of property without compensation.

But wait—as a purely statutory remedy, couldn't the legislature have abolished the claim altogether, or cap it (as they in fact did)? Curiously, the legislature's cap on punitive damages aroused no similar constitutional scrutiny in a recent case.[11] The 1986 split statute called for the split to hit before judgment. The state wasn't "taking" a protected property right in a judgment, because the judgment entered after the one-third levy. So what was the problem?

The majority in *Kirk* dodged the issue altogether, stating: "[T]here is no question that under Colorado law a judgment for exemplary damages qualifies as a property interest."[12] However, their *legerdemain* ignored the central question: When does an award become a judgment? If the state's cut is taken by operation of statute before the judgment is entered, it never becomes part of the "judgment," and thus can't be said to be "taken" without due process. It never belonged to the tort plaintiff in the first place. The majority whistled right past this important detail, and in essence converted the entire claim to a constitutionally protected "legal right to damages for an injury. . . ."[13]

It's no wonder I'm confused. If the Supreme Court had no constitutional problem with the tort reform cap on compensatory damages,[14] or with the cap on punitive damages, how is a provision that merely diverts a third to the state before judgment is entered constitutionally DOA?

The Plaintiff as Privateer

The *Kirk* majority treated punitive damages much like the "booty" that privateers like John Paul Jones could recover from British merchant ships they captured on the high seas during the Revolutionary War.[15] Once granted letters of marque by the state, privateers could prey on enemy shipping at will, keeping whatever loot they found, because they served the state's war interest by harassing enemy shipping.

One of the primary arguments for punitive damages awards is similar—that they serve the state's interest in deterring egregious conduct. Proponents claim that plaintiffs who seek punitive damages from egregiously bad actors, purveyors of tainted food, and so on act as "private attorneys general," keeping the evil corporations and other wrongdoers honest. Thus, the argument goes, they are entitled to whatever "booty" they can talk a jury out of or collect.

Aside from the problems with predictability discussed above, there is another flaw in this logic: we don't issue letters of marque anymore, and haven't since the early 19th century. Isn't it time, now that it's the 21st century, to take another look at the split idea? The state should get at least a cut of the booty; after all, it's in the state's interest that punitive privateers are acting.

Colorado is the only state thus far that has struck down a split statute on the "takings" theory. The majority of states that have examined it, along with the U.S. Supreme Court, have disregarded the argument. These courts have concluded that the award, being purely statutory in nature, does not vest in the plaintiff until after the split calculation is made and judgment is entered.[16]

Back to the Drawing Board

I would like to suggest that it's time to revisit the issue legislatively and craft a new split. Instead of calling for the money to go to the general fund (which might raise TABOR[17] issues), the money could be put it in a nonprofit fund, administered by the Colorado

Continued on page 110.

Split-Recovery Statutes Do More Harm Than Good

12. *See* White, "The Practical Effects of Split Recovery Statutes and Their Validity as a Tool of Modern Day 'Tort Reform,'" 50 *Drake L.Rev.* 593, 603-04 (2002) (arguing that compensatory damages do not, and are not designed to, compensate the plaintiff for the pain and suffering of the long, arduous trial process; and that the plaintiff who endures the hardship of litigation is more deserving of punitive damages than the government that does nothing).

13. *See* Garrity, "Whose Award is it Anyway? Implications of Awarding the Entire Sum of Punitive Damages to the State," 45 *Washburn L.J.* 395 (Winter 2006) (arguing that split-recovery statutes may encourage both plaintiffs and defendants to settle punitive damages claims prior to trial for a figure greater than the plaintiff's estimated award under the split-recovery statute, but less than the estimated total punitive damages award).

14. Schwartz *et al.*, "I'll Take That: Legal and Public Policy Problems Raised by Statutes That Require Punitive Damages Awards to be Shared With the State," 68 *Mo. L.Rev.* 525, 538-39 (Summer 2003).

15. *Id.*

16. *Id.*

17. *Id.* at 543, *citing* as an example, the state attorneys general Medicaid recoupment litigation against the tobacco companies, which resulted in a $248 billion global settlement and the creation of a $50 million enforcement fund to be used by the National Association of Attorneys General.

18. *Id.* at 540.

19. *Id.* at 545-46.

20. *Id.*

21. *Id.* at 544-45 (2003); Garrity, *supra* note 13 at 412-13.

22. *See* Rabe, "The Constitutionality of Split-Recovery Punitive Damages Statutes: Good Policy but Bad Law," *Utah L.Rev.* 333 (2008) (detailing the various constitutional challenges to split-recovery laws); Schwartz, *supra* note 14 at 548-57.

23. Not everyone agrees that reducing the size and frequency of punitive damages is a good idea. In White, *supra* note 12 at 610, the author explains that the justifications for split-recovery statutes are based on faulty reasoning, and the use of split-recovery statutes to deter punitive damages litigation would of necessity have the effect of allowing egregiously tortuous defendants to escape punishment, thereby encouraging like behavior.

24. *See* CRS § 13-21-102(1)(a) ("The amount of such reasonable exemplary damages shall not exceed an amount which is equal to the amount of the actual damages awarded to the injured party."). ■

An Idea Whose Time Has Come (Again)

Supreme Court or the Colorado Bar Foundation.[18] The fund then could allow deserving but undercompensated plaintiffs to petition for grants to bring them closer to "full" compensation. Another option would be to use the funds generated to help defray the cost of legal aid programs for underserved populations.

Precedents for such a fund exist, even in Colorado (such as the funds used to compensate victims of uninsured real estate agents or attorneys). Many states with split statutes also call for the money to be paid into special funds. Along with Colorado's existing punitive damages cap and requirement that the claim cannot be made in the initial pleading, a split statute is an idea whose time has come (again).

Notes

1. *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605, (2008).

2. *See* Pendell, "Tort Liability Costs for Small Business" (U.S. Chamber Institute for Legal Reform, May 2007), available at www.instituteforlegalreform.com; and Council of Economic Advisers, "Who Pays for Tort Liability Claims? Economic Analysis of the U.S. Tort Liability System" (April 2002), available at www.heartland.org/custom/semod_policybot/pdf/13266.pdf.

3. *Id.*

4. *Id.*

5. *Seward Const. Co., Inc. v. Bradley*, 817 P.2d 971 (Colo. 1991).

6. Harrison, "The Tort Litigation Lottery and Threats to the Rule of Law" (Rutgers University, 2005), available at polisci.msu.edu/sppc2005/papers/satam/May%201%20Harrison%20paper%20on%20%20tort%20litigation%20and%20the%20rule%20of%20law.pdf.

7. *See, e.g., Kirk v. Denver Publishing Co.*, 818 P.2d 262 (Colo. 1991); *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

8. CRS § 13-21-102(4).

9. *See Kirk, supra* note 7. *See also Kaitz v. District Court*, 650 P.2d 553 (Colo. 1982); *Bennett v. Greeley Gas Co.*, 969 P.2d 754 (Colo.App. 1998).

10. *Kirk, supra* note 7.

11. *See Hensley v. Tri-QSI Denver Corp.*, 98 P.3d 965 (Colo.App. 2004).

12. *Kirk, supra* note 7 at 267.

13. *Id.*

14. *See, e.g.*, CRS § 13-21-102.5, upheld in *Scharrel v. Wal-Mart Stores, Inc.*, 949 P.2d 89 (Colo.App. 1997); *Stewart v. Rice*, 25 P.3d 1233 (Colo. App. 2000), *rev'd on other grounds*, 47 P.3d 316 (Colo. 2002).

15. *See* www.nps.gov/revwar/about_the_revolution/privateers.html.

16. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 567 (1972); *Hoskins v. Businessmen's Insurance*, 79 S.W.3d 901, 904 (Mo. 2002); *DeMendoza v. Huffman*, 51 P.3d 1232 (Or. 2002).

17. Colo. Const. art. X, § 20.

18. The Colorado Bar Foundation was started in 1953 to "promote the advancement of jurisprudence and the administration of justice in Colorado through grants to help educate the general public and provide assistance to the State's legal institutions." *See* www.cobar.org/index.cfm/ID/20239/DPWBF/Colorado-Bar-Foundation. ■