



One Minute Memo®

Illinois Supreme Court Strikes Down Pain-and-Suffering Caps on Hospital and Physician Malpractice Liability

On February 4, 2010, the Illinois Supreme Court struck down as unconstitutional the statutory caps on hospital and physician liability for “non-economic damages” in medical malpractice suits. Specifically, in the case of *Lebron v. Gottlieb Memorial Hospital*, the Court ruled that such caps (\$1 million limit for hospitals; \$500,000 for physicians) violated the “separation of powers” clause in the Illinois constitution because the caps encroached on Illinois judges’ inherent powers to decide for themselves, according to the circumstances of each case, whether excessive malpractice verdicts should be reduced (or “remitted”). This is the second time in recent years the Supreme Court struck down such malpractice liability caps, the first time in 1997 when it struck down similar caps with its decision in *Best v. Taylor Machine Works*.

The Court majority acknowledged the legislative purposes behind the damage caps, including the improvement of health care in rural areas, reducing costs of health care as evidenced by other states having similar caps, minimizing the possibility of runaway jury verdicts based largely on passion or prejudice, and fostering settlement of malpractice cases, thus reducing litigation costs. Nevertheless, whether or not these underlying policies are desirable, the Court said it was focusing on the constitutionality of the caps, not their “wisdom.” Judges and juries, the Court opined, must be allowed to award all damages which reasonably compensate medical malpractice plaintiffs, regardless their amount. In so doing, the Court distinguished the non-economic-damage caps from the caps on punitive damages because the latter serve a legitimate public policy of preventing windfall awards to plaintiffs that go beyond making them whole, whereas the former caps unduly limit courts’ authority to award plaintiffs for damages they actually suffered. The Court also discussed similar caps in 17 other states, as well as other states’ court decisions upholding the caps against constitutional challenges. In declining to follow its sister-states’ precedent, the Court held that it is not bound by the law of other states, specifically stating “that ‘everybody is doing it’ is hardly a litmus test for

the constitutionality of the statute.”

Justice Karmeier, joined by Justice Garman, dissented from the Court’s separation-of-powers decision, arguing that the caps are a legitimate exercise of the state’s power over its fiscal and civil-justice systems. Interestingly, the dissent heavily relied on President Obama’s recent call for health-care reform in the civil justice system, as well as a number of other legitimate Illinois statutes aimed at healthcare-cost control. The dissent criticized the Court’s opinion for “flatly violating” the same separation-of-powers principles which the majority claimed to protect, by striking down well-intentioned legislation necessary to combat rising healthcare costs and unreasonably large malpractice verdicts. Elected legislators should be the healthcare policymakers, said the dissent, not the courts. The dissent also questioned whether the procedural posture in which the constitutional question was presented to the trial court was proper.

It is unlikely the decision is appealable to the U.S. Supreme Court. The decision addressed the state constitutionality of a state statute. There does not appear to be any federal constitutional question for the U.S. Supreme Court to decide.

As a result of the decision, risk management personnel for hospitals and physician groups should revisit their current liability policies, and perhaps consult with counsel over whether any changes are necessary. Further, healthcare professionals may expect rising premiums for such policies, unless the General Assembly soon introduces legislation aimed at capping liability verdicts consistent with the Illinois Supreme Court’s decisions in *Lebron* and *Best*.

Please contact the Seyfarth Shaw attorney with whom you work or anyone from the [Healthcare Practice Group](#) with any questions.

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