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Life Sciences Law

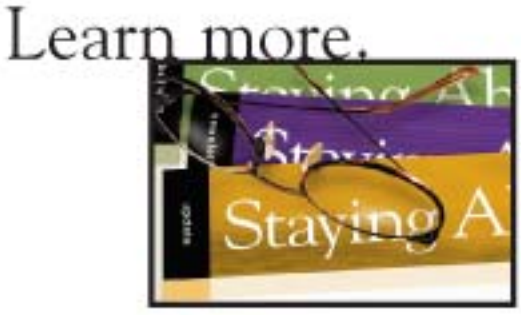
Blowing The Cap Off: Wisconsin Court Declares Cap On Med-Mal Damages Unconstitutional

What happened?

The Supreme Court of Wisconsin struck down as unconstitutional a ten-year old statutory limit on noneconomic damages in medical malpractice cases.

What does it mean?

While medical malpractice plaintiffs in Wisconsin will no longer have their noneconomic damages capped at $350,000, the major impact of this decision will be felt far beyond Wisconsin courtrooms. The state's medical community, which until this decision was considered a safe haven from what some perceive as a national medical malpractice crisis in part because of the cap, is concerned that insurance premiums may skyrocket and patients' access to healthcare providers will be significantly diminished. This case will also meaningfully affect the debate, on both state and national levels, as to whether such damages caps should, or even can, be enacted.



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The Supreme Court of Wisconsin recently determined that the state's statutory limit on noneconomic damages in medical malpractice cases violates the state's constitution and cannot be enforced. *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125, 701 N.W.2d 440 (Wis. 2005). The court concluded that the cap of $350,000 enacted in 1995, Wis. Stat. § 655.017, violated a medical malpractice plaintiff's equal protection rights under the state constitution because there was no rational relationship between that limit and either the objective of compensating victims fairly or the legislative goal of lowering liability insurance premiums and protecting the medical community.

The plaintiff, Matthew Ferdon, was pursuing a medical malpractice case claiming that he was partially paralyzed and had a deformed right arm due to his doctor's negligence during his birth. A jury awarded Ferdon $403,000 in future medical expenses and $700,000 for past and future noneconomic damages. Based on the noneconomic damages cap, the trial court reduced the noneconomic damages to $410,322 (the cap has been adjusted every year since its enactment for inflation). Both the trial court and the Wisconsin Court of Appeals (the intermediate level appellate court) concluded that the damages cap was constitutional. The Wisconsin Supreme Court, in a 4-3 decision, reversed.

Previous rulings from the Supreme Court of Wisconsin and the Wisconsin Court of Appeals held that the ten-year old damages cap was constitutional, which led members of the medical profession on a nationwide basis to recognize Wisconsin as an area that was relatively immune from what the medical community views as a national medical malpractice crisis. In a decision that sent shock waves through the national medical community, the Wisconsin Supreme Court determined that the cap violated the equal protection clause of the state constitution and must be struck down. In making that determination, the court applied the least restrictive level of constitutional review, known as the "rational basis test," where a statute will be struck down only in the rare instance where the court finds no plausible policy reason to justify the statute. The court found that there was no such reason to support the cap, observing that "when the legislature shifts the economic burden of medical malpractice from insurance companies and negligent healthcare providers to a small group of vulnerable, injured patients, the legislative action does not appear rational." *Ferdon*, 701 N.W.2d at 466.

The court also determined that the $350,000 cap was arbitrary and would have only a negligible effect on medical malpractice insurance premiums. The court stated that "[v]ictims of medical malpractice with valid and substantial claims do not seem to be the source of increased premiums for medical malpractice insurance, yet the $350,000 cap on noneconomic damages requires that they bear the burden by being deprived of full tort compensation." *Id.* at 473. Significantly, the court based its decision solely on the Wisconsin constitution, and not the United States Constitution, which assures no direct federal court review of the decision.

The Wisconsin Supreme Court recognized that it was not the first state court to weigh in on the issue of whether noneconomic damages caps in medical malpractice cases violate constitutional requirements of equal protection. Some states had previously determined that such caps do violate equal protection principles. *See, e.g.*, *Arneson v. Olson*, 270 N.W.2d 125 (N.D. 1978); *Moore v. Mobile Infirmary Ass'n*, 592 So.2d 156 (Ala. 1991); *Brannigan v. Usitalo*, 134 N.H. 50, 587 A.2d 1232 (1991). Other states had determined that such caps do not violate such requirements. *See, e.g.*, *Judd v. Drezga*, 103 P.3d 135 (Utah 2004); *Zdrojewski v. Murphy*, 254 Mich. App. 50, 657 N.W.2d 721 (2002); *Univ. of Miami v. Echarte*, 618 So.2d 189 (Fla. 1993).

The spirited debate about the viability and utility of noneconomic damages caps will undoubtedly continue on both the state and federal level. The *Ferdon* decision is one more voice in that debate, although for members of the healthcare community it is clearly a voice that elicits great concern.

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