

Illinois Supreme Court Declares State Malpractice Law Unconstitutional

By Craig A. Conway, J.D., LL.M. (Health Law)
caconway@central.uh.edu

Earlier this month, the Illinois Supreme Court struck down a state law that capped damage amounts that could be awarded in medical malpractice lawsuits holding that the law interferes with juries' constitutional powers to award settlements in civil cases.¹ In a 4-2 decision, the state's highest court overturned a 2005 state law that had capped noneconomic damage awards for a plaintiff's pain and suffering at \$500,000 against doctors and \$1 million against hospitals. The court's decision immediately drew a flurry of media attention² linking the suggested connection between caps on damages as one way to control health care costs. Notably, the suggestion comes at a time when congressional lawmakers are attempting to restart health care reform talks in Washington, D.C. Malpractice award caps have previously been a point of contention between Democratic and Republican lawmakers when discussions of health care reform have taken place.

Facts

In late 2005, Frances Lebron was admitted to Gottlieb Memorial Hospital in Chicago, Illinois, where Dr. Roberto Levi-D'Ancona delivered baby girl by Caesarean section.³ In a subsequently-filed lawsuit against the physician as well as the hospital and an assisting nurse, Ms. Lebron alleged that as a result of certain acts performed during and after the procedure, her daughter Abigaile, sustained permanent injuries including, "severe brain injury, cerebral palsy, cognitive mental impairment, inability to be fed normally, and inability to develop normal neurological function."⁴

In addition to the numerous counts filed in the lawsuit, Lebron sought a judicial determination that the state's law on noneconomic damage caps violated the separation of powers clause⁵ of the Illinois Constitution. Lebron alleged that Abigaile "sustained disability, disfigurement, pain and suffering to the extent that damages for those injuries

¹ See *Lebron v. Gottlieb Mem. Hosp.*, 2010 WL 375190 (Ill.) (unpub. opinion); The Huffington Post, *Illinois Supreme Court: Malpractice Law Unconstitutional*, Feb. 4, 2010, available at http://www.huffingtonpost.com/2010/02/04/illinois-supreme-court-ma_n_449537.html.

² See Bruce Japsen, *Illinois Top Court Strikes Down Medical Malpractice Caps*, CHI. TRIB., (Feb. 4, 2010), available at <http://www.chicagotribune.com/business/ct-biz-medical-malpractice-cap-feb04,0,348689.story>; Chris Rizo, *Illinois Supreme Court Strikes Down Med-Mal Caps*, LEGAL NEWSLINE.COM, Feb. 4, 2010, <http://www.legalnewsline.com/news/225376-illinois-supreme-court-strikes-down-med-mal-caps>; Nathan Koppel, *Illinois Supreme Court Tosses Malpractice-Award Curbs*, WALL ST. J., (Feb. 4, 2010), available at <http://online.wsj.com/article/SB10001424052748703357104575045624066646704.html>; Reuters, *Illinois Court Strikes Down Medical Malpractice Cap Law*, Feb. 4, 2010, <http://www.reuters.com/article/idUSTRE6134CA20100204>.

³ *Lebron v. Gottlieb Mem. Hosp.*, 2010 WL 375190, *1 (Ill.) (unpub. opinion).

⁴ *Id.*

⁵ *Id.* Lebron alleged that the law violated the separation of powers clause by permitting the General Assembly to supplant the judiciary's authority in determining whether a remittitur is appropriate under the facts of the case.

will greatly exceed the applicable limitations on noneconomic damages.”⁶ Additionally, Lebron alleged that the limitation on noneconomic damages constitutes “improper special legislation in that the restrictions...grant limited liability specially and without just cause to a select group of health care providers.”⁷ Finally, Lebron alleged that the damage caps violated her and Abigaile’s right to a trial by jury, due process, equal protection, and a certain and complete remedy.⁸

Trial Court

After pretrial motions were filed, the circuit court determined that the statutory cap on noneconomic damages operates as a legislative remittitur in violation of the separation of powers clause of the state’s constitution and granted Lebron’s partial judgment on the pleadings. Based on an inseverability provision in the cap law, the circuit court invalidated the entire act. The court relied in large part on a previously-decided case, *Best v. Taylor Machine Works*,⁹ in formulating its opinion. In *Best*, the Illinois Supreme Court struck down provisions of the state’s Tort Reform Act of 1995 on similar grounds. Dr. Levi-D’Ancona, the hospital, and nurse appealed directly to the Supreme Court of Illinois and the state’s Attorney General was allowed to intervene to defend the constitutionality of the law.¹⁰

Supreme Court Analysis

At issue before the Court was the constitutionality of the state law capping noneconomic damage awards. Section 2-1706.5 of the Illinois Code of Civil Procedure states, in part:

- (a) In any medical malpractice action or wrongful death action based on medical malpractice in which economic and noneconomic damages may be awarded, the following standards shall apply:
 - (1) In a case of an award against a hospital and its personnel or hospital affiliates...the total amount of noneconomic damages shall not exceed \$1,000,000 awarded to all plaintiffs in any civil action arising out of the care.
 - (2) In a case of an award against a physician and the physician’s business or corporate entity and personnel or health care professional, the total amount of noneconomic damages shall not exceed \$500,000 awarded to all plaintiffs in any civil action arising out of the care.
 - (3) In awarding damages in a medical malpractice case, the finder of fact shall render verdicts with a specific award of damages for economic loss, if any, and a specific award for noneconomic loss, if any.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 689 N.E.2d 1057 (Ill. 1997).

¹⁰ *Lebron v. Gottlieb Mem. Hosp.*, 2010 WL 375190, *2 (Ill.) (unpub. opinion).

The trier of fact shall not be informed of the provisions of items (1) and (2) of this subsection (a).¹¹

According to the legislative findings cited by the Court, the impetus for the law, in part, was the belief by members of the Illinois General Assembly that the rising cost of medical liability insurance increased the financial burdens on physicians and hospitals and, as a result, contributed to a reduction of available medical care in rural portions of the state.¹²

As was done in the trial court, the state's Supreme Court justices relied in large part on their decision made in *Best* which involved a much broader damages cap law.¹³

Special Legislation Argument

The Court first tackled Lebron's allegation that the cap law was deemed to be special legislation – the purpose of which “is to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis.”¹⁴ Lebron's attorneys put forth a logical argument, mainly that the “statute impermissibly penalized the most severely injured persons whose award for noneconomic damages would likely exceed \$500,000 but for the statutory cap, and that the statute arbitrarily benefited certain tortfeasors by relieving them of liability for fully compensating injured persons.”¹⁵

The Court agreed, noting:

[a]lthough agreeing with the defendants that noneconomic injuries are difficult to assess, we determined that such difficulty was not alleviated by imposing an arbitrary damages limitation in all cases...Indeed, we determined that the damages limitation actually undermined the statute's stated goal of providing consistency and rationality to the civil justice system.¹⁶

The Court further rejected defendants' arguments that the legislature's interest in reducing the systemic costs of tort liability was sufficient to overcome the plaintiffs' argument – noting that the entire burden of any cost savings would impermissibly rest on one class of injured plaintiffs.¹⁷

¹¹ 735 ILCS 5/2-1706.5 (West 2008) (adopted as part of Pub. Act 94-677, § 330, eff. Aug. 25, 2005).

¹² *Lebron v. Gottlieb Mem. Hosp.*, 2010 WL 375190, *4 (Ill.) (unpub. opinion).

¹³ *Id.* at *10 (the damages cap law in question was § 2-1115.1 which applied to all actions, whether based on the common law or statute, that sought damages on account of death, bodily injury, or physical damage to property based on negligence, or product liability based on any theory or doctrine). See 735 ILCS 5/2-1706.5(a) (West 2008).

¹⁴ *Id.* at *5 (citing *Best*, 689 N.E.2d 1057).

¹⁵ *Id.*

¹⁶ *Id.* at *6.

¹⁷ *Id.*

Separation of Powers Argument

Next, the Court analyzed Lebron's argument that the cap law violated the separation of powers clause of the Illinois Constitution. Specifically, Ms. Lebron alleged that the statute in question "invaded the province of the judiciary to assess, on a case-by-case basis, whether a jury's award is excessive, by imposing a one-size-fits-all legislative remittitur."¹⁸

The purpose of the state's separation of powers clause "is to ensure that the whole power of two or more branches of government shall not reside in the same hands."¹⁹ Thus, the Court reasoned, the "legislature is prohibited from enacting laws that unduly infringe upon the inherent powers of judges."²⁰ Additionally, Illinois has utilized the doctrine of remittitur which holds that a court has a duty to correct a verdict outside the range of what is reasonable or otherwise results from passion or prejudice by carefully examining the particular evidence and circumstances of the case.²¹

The Court again relied upon its analysis conducted in the *Best* case and applied it to the facts of Ms. Lebron's case. Under the medical malpractice cap law, the court would be required to override the jury's decision and reduce any non-economic damages in excess of the statutory cap, irrespective of the facts and without plaintiff's consent. As a result, the Court noted that the law violated the separation of powers clause because it "unduly encroaches upon the fundamentally judicial prerogative of determining whether a jury's assessment of damages is excessive within the meaning of the law."²²

Although the Illinois Attorney General attempted to argue that the cap law was rationally related to an important state purpose, the Court did not buy it. It responded by stating, "the inquiry...is not whether the damages cap is rationally related to a legitimate government interest but, rather, whether the legislature, through its adoption of the damages cap, is exercising powers properly belonging to the judiciary."²³

The Court additionally dismissed defendants' claim that invalidating the noneconomic damage cap law would undermine the authority of the state's General Assembly to change the common law – a process it has undertaken a number of times. The Court reasoned that while the General Assembly has such authority, it is not absolute. It must be exercised within constitutional boundaries.

The "Everybody is Doing It" Argument

The defendants made a point of directing the Court's attention to every state which has laws in place limiting or capping noneconomic damages in medical malpractice cases. In

¹⁸ *Id.*

¹⁹ *Id.* at *7 (citing *People v. Walker*, 519 N.E.2d 890 (Ill. 1988)).

²⁰ *Id.*

²¹ *Lebron v. Gottlieb Mem. Hosp.*, 2010 WL 375190, *7 (Ill.) (unpub. opinion) (citing *Richardson v. Chapman*, 676 N.E.2d 621 (1997)).

²² *Id.* at *10 (citing *Best*, 689 N.E.2d 1057).

²³ *Id.*

response, the Court mentioned California's law which caps noneconomic damages at \$250,000 as well as Florida's law which offers of range of between \$150,000 and \$1.5 million to be awarded in such cases. However, the Court was quick to note that simply because the Illinois cap law fits within the range of caps established by other states does not mean that the law does not run afoul of the separation of powers clause of the state's constitution. The Court stated, "that everybody is doing it is hardly a litmus test for the constitutionality of the statute."²⁴

Conclusion

Dr. James Rohack, president of the American Medical Association criticized the Court's decision saying that it would increase medical liability rates and hurt individuals' access to health care.²⁵ In a written response, he noted:

[t]oday's court decision threatens to undo all that Illinois patients and physicians have gained under the cap, including greater access to health care, lower medical liability rates and increased competition among medical liability insurers.²⁶

More than half of the 50 states have some form of noneconomic damage cap law on the books – with ceilings ranging from \$250,000 to \$700,000, according to a Robert Wood Johnson Foundation study.²⁷ The results have been mixed at best. Unlike Texas where the number of malpractice suits reportedly dropped by half after caps were instituted in 2003, many states have seen no reduction in lawsuits.²⁸

As challenges to malpractice caps continue, some states are attempting to address one of the more expensive medical malpractice torts, birth injury. For example, the Florida Neurological Compensation Association (NICA) and the Virginia Birth-Related Injury Compensation Program (BIP) are programs designed to work within a defined clinical area, award compensation based on causal linkage of outcomes and birth events, and require that patients seek compensation through a nonjudicial process.²⁹ A future article will discuss these programs.

Health Law Perspectives (February 2010)

Health Law & Policy Institute

University of Houston Law Center

<http://www.law.uh.edu/healthlaw/perspectives/homepage.asp>

²⁴ *Id.* at *17.

²⁵ Statement of J. James Rohack, MD, *AMA: Illinois Health Care Access Threatened by Court Decision*, Feb. 4, 2010, available at <http://www.ama-assn.org/ama/pub/news/news/illinois-health-care-access.shtml>.

²⁶ *Id.*

²⁷ Robert Wood Johnson Found., *Spotlight on Malpractice Reform*, Jan. 7, 2010, available at <http://www.rwjf.org/pr/product.jsp?id=53988>.

²⁸ *Id.*

²⁹ See Gil Siegal, *Adjudicating Severe Birth Injury in Florida and Virginia: The Experience of a Landmark Experiment in Personal Injury Compensation*, 34:4 AM. J. OF L. AND MED. 489 (Oct. 2008).

The opinions, beliefs and viewpoints expressed by the various Health Law Perspectives authors on this web site do not necessarily reflect the opinions, beliefs, viewpoints, or official policies of the Health Law & Policy Institute and do not constitute legal advice. The Health Law & Policy Institute is part of the University of Houston Law Center. It is guided by an advisory board consisting of leading academicians, health law practitioners, representatives of area institutions, and public officials. A primary mission of the Institute is to provide policy analysis for members of the Texas Legislature and health and human service agencies in state government.