

## CASES WHERE “CAPS” HAVE BEEN HELD UNCONSTITUTIONAL

- \* Alabama – *Smith v. Schulte*, 671 So.2d 1334 (Ala. 1995) (*per curiam*) (\$1 million cap in wrongful death cases against health care providers violates both equal protection and the right to jury trial); *Henderson v. Alabama Power Co.*, 627 So.2d 878 (Ala. 1993) (\$250,000 punitive-damage cap violates right to jury trial); *Moore v. Mobile Infirmary Assoc.*, 592 So.2d 156, 158 (Ala. 1991) (\$400,000 non-economic damage cap in medical malpractice cases violates jury trial and equal protection guarantees).
- \* Florida – *Smith v. Dep’t of Ins.*, 507 So.2d 1080, 1089-89 (Fla. 1987) (*per curiam*) (\$450,000 cap on non-economic damages recoverable in actions for personal injury violates open courts provision).
- \* Georgia – *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010) (legislated cap on non-economic damages enacted as part of Georgia’s “Tort Reform Act of 2005” violates State constitution’s guarantee that “[t]he right to trial by jury shall remain inviolate”).
- \* Illinois – *Lebron, a Minor v. Gottlieb Memorial Hospital*, 930 N.E.2d 895 (Ill. 2010) (limitations on non-economic damages violate the constitutional separation of powers); *Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Ill. 1997) (\$500,000 cap on non-economic damages was a legislative *remittitur*, in violation of the separation of powers doctrine, and constituted impermissible special legislation); *Wright v. Central Du Page Hosp. Ass’n*, 347 N.E.2d 736 (Ill. 1976) (\$500,000 cap unconstitutional as denial of equal protection).
- \* Kansas – *Mahomes-Vinson v. U.S.*, 751 F. Supp. 913 (D. Kan. 1990) (\$1 million overall damage cap and \$250,000 non-economic damage cap violate jury trial right); *Kansas Malpractice Victims Coalition v. Bell*, 757 P.2d 251 (Kan. 1988), overruled in part by *Bair v. Peck*, 811 P.2d 1176 (Kan. 1991) (medical malpractice damage caps violate jury trial and due process rights and constitute pre-established *remittitur*).
- \* Louisiana – *Oliver v. Magnolia Clinic*, WL 4703880 (La. 2010) (Louisiana Medical Malpractice Act, which capped general damages at \$500,000, ruled unconstitutional); *Chamberlain v. State*, 624 So.2d 874, 988 (La. 1993), superceded by La. Const. Art. XII, Section 10(c) (\$500,000 ceiling on general damages recoverable in a personal injury suit against State violates right to remedy where sovereign immunity has been waived).
- \* Missouri – *Klotz v. St. Anthony’s Medical Center*, 311 S.W.3d 752 (Mo. 2010) (in limited decision, application of new non-economic damages cap to causes of action filed after August 28, 2005 violates State constitutional prohibition on retrospective laws).
- \* New Hampshire – *Brannigan v. Usitalo*, 587 A.2d 1232, 1237 (N.H. 1991) (\$875,000 limitation on non-economic damages recoverable in actions for personal injury violates equal protection);

*Carson v. Mauer*, 424 A.2d 825, 836-38 (N.H. 1980) (\$250,000 non-economic damage cap in medical malpractice cases violates equal protection).

\* New Mexico – *Richardson v. Carnegie Library Restaurant, Inc.*, 763 P.2d 1153, 1164 (N.M. 1989) (\$50,000 damage cap in dramshop act violates equal protection); *Trujillo v. City of Albuquerque*, 125 N.M. 721, 733 (N.M. 1998) (New Mexico Tort Claims Act’s cap invalidated because it does not serve an important government interest).

\* North Dakota – *Arneson v. Olson*, 270 N.W.2d 125, 135-36 (N.D. 1979) (\$300,000 limit on damages recoverable in medical malpractice actions violates state and federal equal protection guarantees).

\* Ohio – *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* 86 Ohio St.3d 451 (Ohio 1999) (\$250,000 non-economic damages cap and \$250,000 punitive damages cap violate separation of powers); *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994) (caps violate right to jury trial); *Morris v. Savoy*, 576 N.E.2d 765 (Ohio 1991) (\$200,000 cap on malpractice general damages struck down on state due process grounds); *Jeanne v. Hawkes Hosp. of Mt. Carmel*, 598 N.E.2d 1174 (Ohio 1991) (\$200,000 cap on malpractice general damages struck down on equal protection grounds); *Duren v. Suburban Community Hosp.*, 495 N.E.2d 51 (1985) (limit on survivorship claim damages of \$200,000 unconstitutional under both State and Federal Constitution).

\* Oregon – *Lakin v. Senco Products, Inc.*, 329 Ore. 62 (1999) (\$500,000 cap on non-economic damages in personal injury and wrongful death actions violates jury trial right).

\* South Carolina – *Hanvey v. Oconee Memorial Hosp.*, 416 S.E.2d 623 (S.C. 1992) (statute limiting hospital’s immunity to \$100,000 when other charities had \$200,000 limit violates equal protection).

\* South Dakota – *Knowles v. United States*, 544 N.W.2d 183 (S.D. 1996) (\$1 million medical malpractice compensatory damage cap violates substantive due process).

\* Texas – *Lucas v. United States*, 757 S.W.2d 687, 690-92 (Tex. 1988) (\$500,000 cap for damages in medical malpractice actions violates State’s open courts guarantee); *Waggoner v. Presbyterian Medical Center*, 647 F. Supp. 1102 (N.D. Tex. 1986) (\$500,000 cap on medical malpractice recoveries violates the equal protection clauses of both the State and Federal Constitutions and the open courts guarantee of the State Constitution); *Baptist Hosp. of Southeast Texas, Inc. v. Baber*, 672 S.W.2d 296 (Tex. 1984) (\$500,000 cap on hospital’s malpractice liability violates equal protection).

\* Utah – *Condemarin v. University Hosp.*, 775 P.2d 349, 364, 366 (Utah 1989) (\$100,000 medical malpractice liability limit for state hospitals violates jury trial right).

\* Washington – *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989) (cap on non-economic damages for personal injury at a rate of 0.43 times average annual wage and life expectancy violates jury trial guarantee).

\* Wisconsin – *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (July 14, 2005) (\$350,000 cap on non-economic damages in medical malpractice cases violates equal protection.); *Martin v. Richards*, 531 N.W.2d 70, 93 (Wis. 1995) (retroactive application of \$1 million cap on non-economic damages violates due process).