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CASES WHERE “TORT REFORMS” HAVE BEEN HELD UNCONSTITUTIONAL

Alabama – *Lloyd Noland Hosp. v. Durham*, 906 So.2d 157 (Ala. 2005) (periodic payment scheme for hospitals held liable for over \$150,000 in damages violates right to jury trial under State constitution); *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).

Arizona – *Duncan v. Scottsdale Medical Imaging, Ltd.*, 70 P.3d 435 (Ariz. 2003) (provision of medical malpractice statute that abolished right to bring an action in battery against a licensed health care provider violates anti-abrogation clause of State constitution); *Boswell v. Phoenix Newspapers*, 730 P.2d 186, 194-95 (Ariz. 1986), *cert. denied*, 481 U.S. 1029 (1987) (retraction in lieu of damages in defamation actions violates state “open courts” provision).

Arkansas – *Broussard v. St. Edward Mercy Health System*, 386 S.W.3d 385 (2012) (requirement that expert witnesses in medical liability lawsuits be the same specialty as defendant doctors violates the separation of powers doctrine); *Bayer CropScience LP v. Schafer*, 2011 Ark. 518 (punitive damages cap of greater of \$250,000 or three times compensatory damages, not to exceed \$1 million, is unconstitutional as it limits the amount of recovery outside the employment relationship). *Johnson v. Rockwell Automation, Inc.*, 308 S.W.3d 135 (Ark. 2009) (nonparty-fault and medical-costs provisions of the 2003 Civil Justice Reform Act violate separation of powers under State Constitution); *Summerville v. Thrower*, 253 S.W.3d 415 (Ark. 2007) (statutory requirement of dismissing medical malpractice action for failure to timely submit reasonable cause affidavit is unconstitutional).

Florida – *McCall v. United States*, No. SC11–1148 (2014) (cap on wrongful death non-economic damages violates the Equal Protection Clause of the Florida Constitution). *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"); *Denton v. Con-Way Southern Express, Inc.*, 402 S.E.2d 269 (Ga. 1991) (statute admitting collateral source payments violates right to a remedy); (overruled by *Grissom v. Gleason*, 418 S.E.2d 27 (1992) but as applied to corporate defendant); *McBride v. GM Corp.*, 737 F. Supp. 1563 (M.D. Ga. 1990) (law allowing only one punitive award in products liability cases violates Georgia and federal equal protection constitutional guarantees).

Illinois – *Lebron, a Minor v. Gottlieb Memorial Hospital*, 930 N.E.2d 895 (Ill. 2010) (limitations on non-economic damages violates 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 *legislativeremittitur*, in violation of the separation of powers doctrine, and constituted impermissible special legislation as did abolition of joint and several liability and discovery statutes which mandate unlimited disclosure of plaintiffs' medical information and records); *Wright v. Central Du Page Hosp. Ass'n*, 347 N.E.2d 736 (Ill. 1976) (\$500,000 cap unconstitutional as denial of equal protection).

Indiana – *Ledbetter v. Hunter*, 810 N.E.2d 1095, 1102 (Ind. 2004) (statute of limitations as applied to minors unconstitutional under privileges and immunities clause of State constitution).

Kansas – *Thompson v. KFB Insurance Co.*, 850 P.2d 773 (Kan. 1993) (allowing jury to consider collateral source benefits when prayer for relief is in excess of \$150,000 violates equal protection); *Mahomes-Vinson v. U.S.*, 751 F. Supp. 913 (D. Kan. 1990) (\$1 million overall damage cap and \$250,000 non-economic damage cap violates 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 preestablished *remittitur*); *Farley v. Engleken*, 740 P.2d 1058 (Kan. 1987) (repeal of collateral source rule violates equal protection); *Wentling v. Medical Anesthesia Services, P.A.*, 701 P.2d 939 (Kan. 1985) (same).

Kentucky – *O'Bryan v. Hedgespeth*, 892 S.W.2d 571 (Ky. 1995) (statute admitting evidence of collateral source payments in personal injury cases violates separation of powers and exercises judicial powers to set rules of practice).

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).

Michigan – *Park v. Detroit Free Press*, 72 Mich. 560, 566-67 (Mich. 1888) (retraction as alternative to the non-economic damages claimed in a libel cases violates right to a remedy).

Missouri – *Lewellen v. Franklin*, No. SC92871 (2014) (state’s punitive damages cap totaling the greater of \$500,000 or five times the judgment’s net amount violates right to jury trial); *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (2012) (state’s \$350,000 cap on non-economic damages in medical liability cases violates the right to jury trial guaranteed by the Missouri Constitution). *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) (abrogation of collateral source rule and \$250,000 non-economic damage cap in medical malpractice cases violate 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 – *Kiminski v. Metal & Wire Prods. Co.*, 175 Ohio App.3d 227 (2008) (portion of state’s tort reform statute, R.C. 2745.01, which provided that employee could not recover against employer for employment intentional tort, unless employee could demonstrate that employer deliberately intended to harm employee, struck down as unconstitutional); *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* 86 Ohio St.3d 451 (Ohio 1999) (\$250,000 non-economic damages cap, \$250,000 punitive damages cap, certificate of merit and modification of the collateral source rule 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).

Oklahoma – *Wall v. Marouk*, 302 P.3d 775 (2013) (requiring the filing of an affidavit of merit in actions for professional negligence places an impermissible financial burden on access to the courts); *Douglas v. Cox Retirement Properties, Inc.*, 302 P.3d 789 (2013) (“Comprehensive Lawsuit Reform Act of 2009” violates the single-subject rule of the Oklahoma Constitution). *Zeier v. Zimmer, Inc.*, 152 P.3d 861 (Okla. 2006) (medical malpractice affidavit pleading requirement violates “special law” provision of the Oklahoma constitution).

Oregon – *Klutschkowski v. Peacehealth*, 354 Or 150 (2013) (\$500,000 non-economic damages cap in medical malpractice cases violates the right to jury trial guaranteed by the state Constitution). *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).

Pennsylvania – *DeWeese v. Weaver*, 880 A.2d 54 and 824 A.2d 364 (Pa. Commonwealth 2005) (joint liability reform amendment violates single subject rule of State Constitution).

Rhode Island – *Maguire v. Licht*, 2001 WL 1006060 (R.I. 2001) (provision allowing defense to introduce collateral source evidence so jury may reduce plaintiff’s judgment accordingly held unconstitutional).

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 – *Robinson v. Crown Cork & Seal Co., Inc.*, 2010 WL 4144587 (Tex.) (statutes limiting corporate successor liability for asbestos-related claims violate State constitutional prohibition against retroactive laws); *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 – *Schroeder v. Weighall*, 316 P.3d 482 (2014) (eliminating the tolling of the statute of limitations for minors in medical malpractice claims violates the equal protection clause of the state Constitution). *Putnam v. Wenatchee Valley Medical Center*, 216 P.3d 374 (Wash. 2009) (medical malpractice certificate of merit statute ruled unconstitutional); *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).

STATUTES OF REPOSE – State supreme courts have struck down statutes of repose as violative of state constitutional guarantees of due process, equal protection, access to the courts, and/or a complete and certain remedy. *See, e.g., Deen v. Egleston*, 2009 WL 368647 (S.D. Ga. 2009) (medical malpractice statute of repose, as applied to mentally handicapped plaintiffs, ruled unconstitutional); *Jaramillo v. Heaton*, 100 P.3d 204 (N.M.App. 2004); *Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Ill. 1997); *Hazine v. Montgomery Elevator Co.*, 861 P.2d 625 (Ariz. 1993); *Lee v. Gauflin*, 867 P.2d 572 (Utah 1993); *Hales v. Industrial Comm’n*, 854 P.2d 537 (Utah App. 1993); *Perkins v. Northeastern Log Homes*, 808 S.W.2d 809 (Ky. 1991); *McCollum v. Sisters of Charity*, 799 S.W.2d 15 (Ky. 1990); *Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc.*, 782 P.2d 188 (Utah 1989); *Horton v. Goldminer’s Daughter*, 785 P.2d 1087 (Utah 1989); *Funk v. Wollin Silo & Equip., Inc.*, 435 N.W.2d 244 (Wis. 1989); *Turner Constr. Co., Inc. v. Scales*, 752 P.2d 467 (Alaska 1988); *Hanson v. Williams County*, 389 N.W.2d 319 (N.D. 1986); *Tabler v. Wallace*, 704 S.W.2d 179 (Ky. 1985); *Zacher v. Budd Co.*, 396 N.W.2d 122 (S.D. 1986); *Berry v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985); *Daugaard v. Baltic Coop. Bldg. Supply Ass’n*, 349 N.W.2d 419 (S.D. 1984); *Nelson v. Krusen*, 678 S.W.2d 918 (Tex. 1984); *Kennedy v. Cumberland Engineering Co., Inc.*, 471 A.2d 195 (R.I. 1984); *Austin v. Litvak*, 682 P.2d 41 (Colo. 1984); *Heath v. Sears, Roebuck & Co.*, 464 A.2d 288 (N.H. 1983); *State Farm Fire and Casualty Co. v. All Electric, Inc.*, 660 P.2d 995 (Nev. 1983); *Jackson v. Mannesmann Demag Corp.*, 435 So.2d 725 (Ala. 1983); *Lankford v. Sullivan, Long & Hagerty*, 416 So.2d 996 (Ala. 1982); *Diamond v. E. R. Squibb & Sons, Inc.*, 397 So.2d 671 (Fla. 1981).