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Compensation Caps – The War on Women, Children, Seniors and the Poor

When President Clinton vetoed a products liability bill on May 2, 1996, he said, “The legislation would make it impossible for some people to recover fully for non-economic damages. This is especially unfair to senior citizens, women, children, who have few economic damages, and poor people, who may suffer grievously but, because their incomes are low, have few economic damages.”

WHAT ARE “NON-ECONOMIC DAMAGES”?

Non-economic damages compensate injured consumers for intangible but real “quality of life” injuries, like permanent disability, disfigurement, trauma, loss of a limb, blindness or other physical impairment. Professor Lucinda Finley noted in a recent study, “certain injuries that happen primarily to women are compensated predominantly or almost exclusively through noneconomic loss damages. These injuries include sexual or reproductive harm, pregnancy loss, and sexual assault injuries.”¹

HOW DOES THE MEDICAL MALPRACTICE BILL LIMIT NON-ECONOMIC DAMAGES?

Caps on non-economic damages make it very difficult for many sick and injured women, children, seniors and those who are poor, to obtain adequate compensation, destroying yet another safety net for many vulnerable children and families.

DO CAPS DISCRIMINATE AGAINST WOMEN?

Yes. According to Professor Lucinda Finley in a recent study, “[J]uries consistently award women more in noneconomic loss damages than men ... [A]ny cap on noneconomic loss damages will deprive women of a much greater proportion and amount of a jury award than men. *Noneconomic loss damage caps therefore amount to a form of discrimination against women and contribute to unequal access to justice or fair compensation for women.*”²

¹ Lucinda M. Finley, “The 2004 Randolph W. Thorer Symposium: The Future Of Tort Reform: Reforming The Remedy, Re-Balancing The Scales: Article: The Hidden Victims Of Tort Reform: Women, Children, And The Elderly, Emory Law Journal,” 53 Emory L.J. 1263, Summer, 2004.

² *Ibid.* (emphasis added)