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## NEW COURT DECISION: "CAPS" ARE UNCONSTITUTIONAL

On July 14, 2005, the Wisconsin Supreme Court struck down that state's \$350,000 non-economic damage cap in medical malpractice cases. (For a list of other states that have struck down "tort reforms," see "*Tort Reforms*" are Unconstitutional, Center for Justice & Democracy Fact Sheet, [http://www.centerjd.org/free/mythbusters-free/MB\\_Unconstitutional.htm](http://www.centerjd.org/free/mythbusters-free/MB_Unconstitutional.htm))

The court found no rational basis for the cap and a violation of equal protection. The case, *Ferdon v. Wisconsin Patients Compensation Fund*, involved a severely injured child. The Wisconsin Supreme Court found the following:

### **Severely Injured Children and their Families Are Most Hurt By Cap:**

¶ 82: The \$350,000 cap limits the claims of those who can least afford it; that is, the claims of those, including children such as Matthew Ferdon, who have suffered the greatest injuries. Thus, the cap's greatest impact falls on the most severely injured victims.

¶ 99 That is, "[p]laintiffs with the most severe injuries appear to be at the highest risk for inadequate compensation. Hence, the worst off may suffer a kind of 'double jeopardy' under caps."

¶ 100 Furthermore, because an injured patient shares the cap with family members, the cap has a disparate effect on patients with families.

¶ 101 [W]hen the legislature shifts the economic burden of medical malpractice from insurance companies and negligent health care providers to a small group of vulnerable, injured patients, the legislative action does not appear rational. Limiting a patient's recovery on the basis of youth or how many family members he or she has does not appear to be germane to any objective of the law.

¶ 165 ... there is no objectively reasonable basis to conclude that the \$350,000 cap justifies placing such a harsh burden on the most severely injured medical malpractice victims, many of whom are children.

### **Patient Safety Hurt by Cap:**

¶ 89: After all, "[i]t is a major contradiction to legislate for quality health care on one hand, while on the other hand, in the same statute, to reward negligent health care providers.... A cap on noneconomic damages diminishes tort liability for health care providers and diminishes the deterrent effect of tort law."

**Caps Do Not Lower Malpractice Premiums:**

¶128 Victims 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.

¶129 Based on the available evidence from nearly 10 years of experience with caps on noneconomic damages in medical malpractice cases in Wisconsin and other states, it is not reasonable to conclude that the \$350,000 cap has its intended effect of reducing medical malpractice insurance premiums. We therefore conclude that the \$350,000 cap on noneconomic damages in medical malpractice cases is not rationally related to the legislative objective of lowering medical malpractice insurance premiums.

**Caps Do Not Attract Physicians to the State:**

¶171 The available evidence indicates that health care providers do not decide to practice in a particular state based on the state's cap on noneconomic damages.

**Medical Malpractice is a Tiny Fraction of Health Care Costs:**

¶ 162 [M]edical malpractice insurance premiums are an exceedingly small portion of overall health care costs.

¶166 We agree with those courts that have determined that the correlation between caps on noneconomic damages and the reduction of medical malpractice premiums or overall health care costs is at best indirect, weak, and remote.

**Defensive Medicine Does Not Lead to Higher Health Care Costs:**

¶174 Three independent, non-partisan governmental agencies have found that defensive medicine cannot be measured accurately and does not contribute significantly to the cost of health care.

¶175 The evidence does not suggest that a \$350,000 cap on noneconomic damages is rationally related to the objective of ensuring quality health care by preventing doctors from practicing defensive medicine. We agree with the non-partisan Congressional Budget Office's finding that evidence of the effects of defensive medicine was "weak or inconclusive."