

## The Disparate Impact of “Tort Reform” on the Elderly, the Unemployed, and Women

A new Cato Institute book, *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, written by six top medical malpractice researchers, examined the impact of Texas' non-economic damages cap enacted in 2003.<sup>1</sup>

The data show that while the cap had a disparate impact across all demographic groups, the hardest hit appear to be unemployed patients and the elderly. And because these two groups “are disproportionately female,” this disparate effect likely extends to women as well.<sup>2</sup>

- In Texas, from 2003 to 2009, “total payouts dropped by 78 percent for adult nonelderly claimants and 80 percent for elderly claimants.”<sup>3</sup>
- The elderly are about 10 percent of the population but their interaction with the health care system is much higher, representing “35 percent of medical spending.” Despite this, they “represent only 17 percent of large paid claims and 10 percent of payouts.”<sup>4</sup>
- Elderly patients “are more strongly affected by the non-economic damages cap” as “only 25 percent of elderly payouts are attributable to economic damages, compared to 57 percent for the adult nonelderly.”<sup>5</sup>
- The authors explain that they “lack the data to study a potential disproportionate impact on women or the unemployed” but say “some effect is likely. The same factors that produce a greater effect for the elderly should affect these other groups as well. In addition, elderly claimants were disproportionately likely to be women.”<sup>6</sup>

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<sup>1</sup> Bernard S. Black et al., *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, Cato Institute (2021) at 135, 149. (Page numbers refer to the Kindle edition.)

<sup>2</sup> Id. at 152, 164-165.

<sup>3</sup> Id. at 171.

<sup>4</sup> Ibid.

<sup>5</sup> Id. at 179.

<sup>6</sup> Id. at 184.