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Maryland Court Upholds State Cap on Noneconomic Damages



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September 27, 2010 — The Court of Appeals of Maryland on Friday upheld a state law dear to physicians that caps pain and suffering damages in personal injury cases, such as those involving malpractice.

However, in the nationwide quest for tort reform, what happened in Maryland is an ambiguous matter of win some, lose some. Earlier this year, [similar laws](#) in Illinois and Georgia that limited noneconomic damages were overturned as unconstitutional by the supreme courts in those states.

Maryland is 1 of some 30 states that limit damages of various sorts in malpractice cases, and 1 of 21 that cap noneconomic damages in particular. The noneconomic caps range from \$250,000 in 9 states to \$680,000 for medical malpractice and \$725,000 for other personal injury cases in Maryland, where the cap law has withstood 2 previous constitutional challenges (in Maryland, the caps increase by \$15,000 each year).

Organized medicine argues that caps are key to reducing frivolous lawsuits and lowering the cost of medical liability insurance. Eliminating the prospect of a 7- or 8-figure jury award may discourage some individuals from ever filing suit, and when plaintiffs do prevail at trial, damages paid out by malpractice carriers are lower, translating into lower premiums for insureds.

In an amicus curiae or "friend of the court" brief in the Maryland case, the American Medical Association, the Maryland State Medical Society, and a physician-owned malpractice carrier warned that striking down the cap law there "would be a disaster for Maryland's health care industry." High malpractice insurance premiums could prompt some physicians to leave the state or stop performing high-risk procedures, reducing access to care, according to the amicus brief.

National Law Could End State-by-State "Guerrilla Warfare"

Organized medicine and Republicans in Congress have long sought a national law capping noneconomic damages in malpractice litigation. American Medical Association President-Elect Cecil Wilson, MD, told *Medscape Medical News* that such a law would "get us out of this guerrilla warfare" of passing legislation state by state and then defending it from attacks.

"Each state has a different constitution, and even in the same state, different judges may come to different conclusions," said Dr. Wilson. "That's a challenge."

However, Dr. Wilson acknowledged the difficulty of persuading Congress to cap noneconomic damages. Democrats, traditionally supported by the trial attorney lobby, have not favored this type of tort reform because they view it as interfering with the constitutional right to a trial by jury.

"Even when we had a Republican president and Republicans in control of both houses, we couldn't get a cap law," lamented Dr. Wilson. "With the Democrats in control, we are under no illusion that we can get one now. But that doesn't mean we won't continue working on the issue."

On a brighter note, Dr. Wilson said he sees promise in upcoming [federal efforts](#) — authorized by the new healthcare reform law — to test alternatives to malpractice litigation that encourage disclosure of medical errors, prompt and fair resolution of disputes, and overall improvement of patient safety. Such changes could reduce defensive medicine, which caps on noneconomic damages have not accomplished, he said.

Arguments of Maryland Plaintiffs Had Been Rejected Before

The case decided by the Maryland appeals court did not involve medical malpractice but, instead, the drowning death of a 5-year-old boy named Connor Freed at a country club swimming pool in 2006. The boy's parents, Thomas and Deborah Freed, sued the company that maintained the pool in a state circuit court, alleging that their son died as a result of the company's negligence.

A jury agreed and awarded the Freeds total damages of \$4,006,442 — \$5000 for funeral expenses, and \$2,000,706 in pain and suffering damages for each parent. However, Maryland's complicated cap law, which has a special formula for dual beneficiaries, reduced the total to \$1,002,500.

The Freeds challenged the law in the state's Court of Special Appeals, saying that it violated their right to a trial by jury and having their injuries fully redressed. They also argued that the statute denied them equal protection under the law, since it created a distinction between less seriously injured tort victims who could receive everything a jury awarded them and more seriously injured victims who could not receive awarded damages that exceeded the cap.

The Court of Special Appeals upheld the cap law, so the Freeds then took their cause to the Court of Appeals of Maryland. In an opinion released Friday, that court said the Freeds had offered no evidence of a clear error or a change in circumstance to justify departing from 2 earlier court rulings that upheld the cap on noneconomic damages. The constitutional challenges made by the Freeds, the court stated, were essentially the same ones it had rejected in the previous cases.

The Freeds did salvage one victory from the appeals courts. The judges ruled that the circuit court erred in throwing out the claim that the Freeds' son experienced conscious pain and suffering while he drowned. The circuit court had reasoned that a jury needed eyewitness testimony — which did not exist — to establish what the boy experienced in his final minutes. However, conscious pain and suffering could reasonably be inferred from expert testimony and case-specific cases, according to the appeals court.

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