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## **TORT UN-REFORM IN ILLINOIS**

### **Illinois Extinguishes Limits On Noneconomic Damages**

On February 4, 2010, the Illinois Supreme Court again held that noneconomic damages caps are unconstitutional in the State of Illinois. In *Lebron v. Gottlieb Memorial Hospital, et al*, the Illinois Supreme Court ruled that Section 2-1706.5 of the Code of Civil Procedure (735 ILCS 5/2-1706.5) was invalid because it violated the separation of powers clause of the Illinois Constitution. Section 2-1706.5 had been enacted in 2005 in response to a health care crisis in Illinois and placed limits on noneconomic damages in medical malpractice cases to \$1,000,000 for hospitals and its employees and \$500,000 for a physician and the physician's practice. Noneconomic damages include compensation for the plaintiff's pain and suffering. In holding the caps unconstitutional, the Court followed its previous ruling in *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), which found a previous statute that placed caps on noneconomic damages for all negligence and product liability cases was unconstitutional under the special legislation clause and the separation of powers clause. While Defendants argued the statutes could be distinguished, the Illinois Supreme Court found the only difference was that the previous statute was broader. It explained that by prospectively placing a limit on the damages in a case, regardless of the facts of the case or the consent of plaintiff, the legislature through the statute encroached upon the power of the judiciary and its power of remittitur. In those circumstances in which the jury returns an excessive verdict, courts can correct this jury verdict with the plaintiff's consent. If the plaintiff does not give consent, the court has a duty to order a new trial. The Illinois Supreme Court held that placing caps on noneconomic damages takes this power from the court and does so without the plaintiff's permission. It effectively gives the remittitur power to the legislature. As such it is a violation of the separation of powers.

This ruling once again extinguishes limits on the noneconomic damages in Illinois and will most likely result in a similar health care crisis in which the State found itself prior to the enactment of the caps. Physicians, especially those in high risk specialties, will likely see their insurance premiums rise and may again flee the State. Hospitals in plaintiff friendly jurisdictions may have difficulty maintaining a staff in specialty areas and will have a hard time sustaining insurance as their exposure could be astronomical. A reduction in physicians and hospitals would result in less access to health care for many Illinois residents.

Prior to the enactment, many physicians moved their practices to Missouri in an attempt of lower exposure and insurance rates. This time physicians may wait to move across the Mississippi River because the constitutionality of the current Missouri's noneconomic cap is being evaluated by the Missouri high court in *Klotz v. St. Anthony's Medical Center*. This case has been argued before the Missouri Supreme Court, but the opinion has not yet been handed down. The plaintiffs

in *Klotz* raise many of the same arguments made by the plaintiffs in *Lebron*, including that the noneconomic caps violate the Missouri's separation of powers clause. The previous Missouri statutory cap was held constitutional by the Missouri Supreme court in *Adams v. Childrens Mercy Hospital*. However, in *Adams*, the Court did not specifically address the separation of powers clause. As such, this ruling in Illinois may not foreshadow what is going to be decided in Missouri. To learn more about the Illinois ruling or pending Missouri case, go to <http://www.state.il.us/court/OPINIONS/SupremeCourt/2010/February/105741.pdf>, <http://www.courts.mo.gov/SUP/index.nsf/fe8feff4659e0b7b8625699f0079eddf/1d75c81ee711b92386257678005920be?OpenDocument>, or contact [Tricia J. Mueller](#), attorney at [Lashly & Baer, P.C.](#), at (314) 621-2939.