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Illinois Supreme Court Strikes Down Caps on Noneconomic Damages in Medical Malpractice Cases

Lebron v. Gottlieb Memorial Hospital

The Illinois Supreme Court struck another blow to tort reform on February 4, 2010. The Court held in *Lebron v. Gottlieb Memorial Hospital*, 2010 WL 375190 (Ill. Feb. 4, 2010) that statutory caps on noneconomic damages, such as pain and suffering, in medical malpractice actions are unconstitutional for violating the separation of powers doctrine required by the Illinois Constitution. This is not the first time tort reform legislation was found unconstitutional by the Illinois Supreme Court. Notably, in *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), the Court struck down the Illinois Tort Reform Act of 1995 and specifically the \$500,000 cap on noneconomic damages in many kinds of cases. Following its reasoning in *Best*, the *Lebron* Court concluded that the medical malpractice caps infringe upon the “judiciary’s sphere of authority” and run “afoul of the separation of powers” required by the Illinois Constitution.

Background

The Court addressed the constitutionality of Section 2-1706.5 of the Illinois Code of Civil Procedure which was adopted as part of Public Act 94-677. Section 2-1706.5 provides a noneconomic damages cap of \$1,000,000 in awards against a hospital and its personnel or affiliates, and a cap of \$500,000 for noneconomic damages against a physician and the physician’s business or corporate entity and personnel. 735 ILCS 2-1706.5(a)(1) and (2). At the trial court level, the Circuit Court of Cook County ruled that these statutory caps violated the separation of powers clause of the Illinois Constitution and declared the entire Act invalid, as it included an “inseverability provision.”

The plaintiffs, Abigaile Lebron and her mother, filed a medical malpractice and declaratory judgment action against Gottlieb Memorial Hospital and the physician and nurse who treated Abigaile’s mother during her pregnancy and delivery of Abigaile. Plaintiffs alleged in their complaint that Abigaile sustained severe brain injury, cerebral palsy, and cognitive mental impairment and that her damages for disfigurement and pain and suffering greatly exceeded the applicable limitations on noneconomic damages. Plaintiffs sought a judicial determination that Section 2-1706.5 violated the Illinois Constitution. The Circuit Court granted plaintiffs’ and denied defendants’ motions for partial judgment on the pleadings and found that Section 2-1706.5 operates as a legislative remittitur in violation of the constitutional separation of powers doctrine and, due to the inseverability provision, invalidated the Act in its entirety.

The defendants appealed directly to the Illinois Supreme Court. The defendants argued that the statute constituted a “valid exercise of the General Assembly’s police power in response to a public threat, as reflected in certain legislative findings, and that ... the statute does not offend separation of powers principles.” The defendants also contended that the caps were a response to the “health-care crisis” in Illinois, including the rising cost of medical liability insurance which increased the financial burdens on physicians and hospitals and which is believed to have contributed to a reduction of available medical care in some areas of Illinois.

Holding

The Court began with an extensive analysis of its decision in *Best* where the Court found the \$500,000 limit on noneconomic damages “arbitrary” and violated the special legislation clause of the Illinois Constitution. 179 Ill.2d 367 (1997). The Court ruled in *Best* that the limitation actually undermined the “stated goal of providing consistency and rationality to the civil justice system.” The Court also addressed the argument that the noneconomic damages cap invaded the province of the judiciary to assess on a case-by-case basis whether a jury’s award is excessive by imposing a “one-size-fits-all” legislative remittitur. The Court concluded in *Best* that the cap “undercuts the power, and obligation, of the judiciary to reduce excessive verdicts... [and] functions as a legislative remittitur... [that] disregards the jury’s careful deliberative process in determining damages....”

In *Lebron*, the defendants tried to distinguish *Best* and argued that it was not controlling because the statute in *Best* was part of a broader effort to reduce systemwide litigation costs whereas Section 2-1706.5 is narrowly tailored to address the health-care crisis specifically and therefore did not unduly encroach on the judiciary. The *Lebron* Court rejected this distinction finding that the encroachment upon the inherent power of the judiciary is the same in *Lebron* as it was in *Best* and Section 2-1706.5 still constitutes an unconstitutional legislative remittitur.

Quoting from *Best*, the Court concluded that Section 2-1706.5 “thus violates the separation of powers clause because it ‘unduly encroaches’ upon the fundamentally judicial prerogative of determining whether the jury’s assessment of damages is excessive within the meaning of the law.” Even though the cap may

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have served a legitimate legislative goal well intended to control litigation costs and address a health-care crisis, the Court ruled that the “crux of our analysis is whether the statute unduly infringes upon the inherent power of the judiciary.” While the legislature may change common law actions, such authority is not absolute and the legislature’s attempt to limit common law damages runs “afoul of the separation of powers clause.” The Court held that the limitation in Section 2-1706.5 was unconstitutional and because of the in-severability provision in the Act, the entire Act was invalid and void in its entirety.

The *Lebron* opinion includes a dissent by Justice Karmeier, joined by Justice Garman, who questioned whether the Court even had jurisdiction to hear the case because the underlying case was still at the pleading stage and the likelihood of plaintiffs’ success of proving liability and noneconomic damages in excess of Section 2-1706.5 was therefore speculative. Justice Karmeier opined that the majority of the Court impermissibly overstepped its own constitutional bounds and had “no business” telling the General Assembly it exceeded its constitutional power while ignoring the constitutional constraints on its own authority. The dissent disagreed with *Best* and said that a statutory cap was not a remittitur since a cap does not involve a “substitution of the court’s judgment for that of the jury, but rather a determination that a higher award is not permitted as a matter of law” According to the dissent, this view has been adopted in a number of other state and federal courts, and should be adopted in Illinois. The dissent notes that a solution to the health care crisis “will not come from the judicial branch” and courts should not “stand as an obstacle to legitimate efforts by the legislature and others to find an answer.”

Commentary

The *Lebron* decision immediately and significantly affects the potential range of jury verdicts in medical malpractice cases in Illinois and may also spur the filing of additional such matters. These possibilities will be watched closely by both Illinois policyholders and their insurers. Groups involved in the state and national health care debates will also focus on the *Lebron* decision in continuing discussions about whether various so-called tort reform measures influence the availability and quality of medical care.

The potential impact of *Lebron* also extends beyond the medical malpractice context. There will undoubtedly be renewed efforts in the Illinois legislature to draft a law that would withstand judicial scrutiny and

attempt to bring predictability to noneconomic damages in medical malpractice and perhaps other types of actions. If there is an increase in the size of verdicts and number of such verdicts, it may create an environment in which larger noneconomic jury verdicts find favor in other kinds of cases. This prospect means Illinois could continue to be viewed as an attractive forum for litigation, resulting in the filing of more cases with little connection to Illinois and only adding to the current reputation of certain Illinois counties as being very “pro-plaintiff.” Finally, other states have similar laws under judicial review, including, for example, Missouri whose Supreme Court heard oral argument on that state’s cap a few weeks ago. Opponents of caps in those jurisdictions will point to the Illinois decision in their efforts to have caps or other measures in those states overturned as well.

For medical malpractice matters and personal injury claims of various types, the possible repercussions of the *Lebron* decision warrant attention by both policyholders and insurers.

About the Authors

Ann Walsh is a partner in the business litigation department. She is the practice group leader for Locke Lord’s Product Liability Practice Group and a member of the firm’s Class Action Practice Group. For more than 29 years, Ms. Walsh has been a trial attorney focusing on product liability and commercial litigation. She also regularly provides client counseling with respect to a variety of commercial disputes.

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