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JUSTICE NO LONGER “CAPPED” IN WISCONSIN

Supreme Court Rules State’s Cap on “Pain and Suffering” Compensation in Medical Malpractice Cases is Unconstitutional

“This is a tremendous victory for our jury system, an important victory for ordinary citizens” exulted David Skoglund, president of the Wisconsin Academy of Trial Lawyers after a Wisconsin Supreme Court ruling today eliminated the state’s 10-year cap on “pain and suffering” (noneconomic) compensation in medical malpractice cases.

The ruling was issued in a case involving young Matthew Ferdon, who suffered a permanent shoulder deformity and partial paralysis during childbirth. A Brown County jury awarded the Matthew and his family \$700,000 in December 2002, but the compensation for pain and suffering was reduced to just over \$410,000 due to the cap. (*Ferdon v. Wisconsin Patients Compensation Fund*, 2003AP0988, 2005 WI 125)

“This is a decision that balances the scales of justice after ten years of watching our state’s legal system be blatantly tilted in favor of the insurance companies against ordinary citizens,” declared Skoglund.

“The cap had imposed enormous hardships on our most severely-harmed victims of medical negligence,” said Skoglund. “The cap unfairly discriminated against those like Matthew Ferdon, injured patients with the fewest economic resources—children, the elderly, stay-at-home parents. Moreover, the cap directly over-rode the decisions of Wisconsin juries, fundamentally undermining citizens’ right to trial by jury.”

“To top it off, the cap prevented Wisconsin’s Injured Patients and Families Compensations Fund from living up to its name,” added Skoglund. The state-run malpractice insurance fund has nearly \$750 million in assets, but paid out just seven claims in fiscal year 2004-05.

“Because of the cap, this massive resource went untapped by the very people for whom it is intended because of the cap,” stated Skoglund.

The cap was enacted by the Legislature in 1995, accompanied by promises of reduced health insurance costs, an increased supply of doctors for impoverished urban and rural areas, and more financial security for the Injured Patients and Families Compensation Fund. None of the promised benefits materialized. Wisconsin health insurance premiums are now second highest in the US (*Expansion Management* magazine, 2/14/05). The shortage of doctors in low-income areas has persisted and may have actually grown worse. As for the health of the Fund, it was in secure condition for five years preceding the cap and now enjoys assets of over \$741 million. (A complete report on the cap’s impact, called “**Justice Capped**,” was released in May by Wisconsin Citizen Action and the Wisconsin Academy of Trial Lawyers and is available at www.watl.org)

“The pretexts developed by the insurance-medical-industrial coalition and used to justify the cap lacked credibility 10 years ago, and a decade of experience in Wisconsin has exposed their feebleness conclusively,” said Skoglund. “Even in Illinois, where a cap was just enacted, insurance executives are now forced to admit that the cap will result in no decrease in either malpractice premiums for doctors or health insurance premiums for patients.”

“This ruling,” Skoglund said, “restores to Wisconsin juries the power to impart justice to injured patients and their families in medical malpractice cases. The cap meant that legislators in Madison had taken authority out of the hands of juries who actually heard all the testimony and became intimately familiar with the details of the case. This was a breach of what our Constitution provides, and today’s ruling gives Wisconsin juries back the authority that they were designated to possess,” concluded Skoglund.

Key facts on medical malpractice costs in Wisconsin

Wisconsin’s rank on malpractice costs as a share of medical expenses: **50th**

Source: *Expansion Management* magazine, Feb. 14, 2005.

Wisconsin’s rank on frequency of malpractice compensation awarded to patients by juries: **49th**

Source: National Practitioners Databank Reports 1992-2002.

Wisconsin’s share of medical malpractice costs as percentage of total health care costs: **0.04% (40 cents of \$100)**

Source: Wisconsin Insurance Report, Office of the Commissioner of Insurance, 1997-2002

Number of medical negligence claims filed in 2004 with the Wisconsin Medical Mediation Panel: **240**

Source: Randy Sproule, Director, Medical Mediation Panels.

Assets of Injured Patients and Families Compensation Fund as of December 31, 2004: **\$747.5 million**

Source: Unaudited Statement of Net Equity by Milliman USA

Number of claims paid from the Fund in fiscal 2004-05: **7**

Amount of Losses paid from the Fund in fiscal 2004-5: **\$20 million**

Source: Injured Patients and Families Compensation Fund Claims Report, June 2, 2005.