MISSOURI SUPREME COURT ABOLISHES NON-ECONOMIC CAPS IN MEDICAL MALPRACTICE LAWSUITS

On July 31, 2012 the Supreme Court of Missouri abolished “caps” on non-economic damages in cases brought under Missouri’s medical negligence statute, §538.210 RSMo.¹ Non-economic damages generally include items like pain and suffering and emotional distress. The court’s ruling in Watts v. Cox Medical Centers, et al., may impact the cost of medical malpractice coverage and eventually its overall availability.

Since the most recent tort reform legislation passed in 2005, plaintiffs in medical malpractice cases have been limited to a maximum recovery of $350,000 in total non-economic damages. This legislation has been hotly contested in Missouri courts since its passage. Missouri had a version of a “cap” in place prior to the 2005 revision, which was originally upheld as constitutional in 1992. That pre-tort reform cap started at $350,000 when enacted, but increased annually with economic escalators, and was applied on a per party, per occurrence (each act of negligence) basis, which allowed for extremely high, albeit “capped”, awards. The 2005 tort reform legislation closed those various loopholes, limiting verdicts consistently for the past six years.

The Watts case was a medical malpractice suit against Cox Medical Center and its associated physicians alleging negligent prenatal care to Deborah Watts that caused catastrophic brain injuries to her son. The jury found in favor of Ms.Watts and awarded her $1.45 million in non-economic damages (as well as future medical expenses). Pursuant to Missouri’s 2005 tort reform statute, the trial court reduced the non-economic damage award to the statutory limit of $350,000. However, the Supreme Court reversed the trial court’s decision. It ruled the limit on non-economic damages in medical malpractice cases was unconstitutional because it interfered with one’s right to a jury trial as guaranteed by the state’s constitution, and, as such, directly overruled the prior 1992 decision upholding the general concept of caps. In fact, the Watts opinion effectively prohibits the Legislature from enacting limitations on damages in the future. Having now been declared “unconstitutional”, it appears that it would take an actual constitutional amendment before caps may see a return in Missouri.

Notably, in April, the Missouri Supreme Court refused, in Sanders v. Ahmad, to abolish the $350,000 non-economic damage cap in “wrongful death” claims because wrongful death actions were actually created legislatively. Hence, they reasoned that the legislature does have the authority to limit recoveries in those cases. That opinion remains good law at present, although is philosophically at odds, in part, with this week’s Watts opinion.

What this means for Missouri physicians, and those who provide their professional liability coverage, is that there is no longer any limit on non-economic damage awards in medical malpractice trials. This will create havoc for insurance carriers in trying to assess their risks, and will likely lead to difficult underwriting and pricing issues for their insurance products. For healthcare providers, the risk of exposure exceeding current coverage is real, and the question of whether one’s “per claim” and aggregate limits are adequate, in light of this ruling, must be addressed.

¹ §538.210 RSMo. states “[I]n any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than three hundred fifty thousand dollars for noneconomic damages irrespective of the number of defendants.”