

NON-ECONOMIC DAMAGE LIMITS IN MEDICAL MALPRACTICE CASES

The existence of damage limits for non-economic damages in medical malpractice cases has changed quite a bit over time, based on actions by the State legislature and decisions by the Wisconsin Supreme Court. Here is a chronological overview of this issue.

1986 through 1990 - \$1 Million Limit:

The first limit on non-economic damage in medical malpractice cases was created by 1985 Wisconsin Act 340. It imposed a \$1 million limit, which was to be adjusted at least annually by the Director of State Courts according to the consumer price index. The limit was in effect for actions filed on or after June 14, 1986 and before January 1, 1991. By the sunset date of January 1, 1991, the maximum allowable inflation-adjusted amount for non-economic damages was \$1,351,000.

1991 through 1995 - no limitation:

After the January 1, 1991, sunset date set in 1985 Act 340, there was no cap on non-economic damages in medical malpractice cases until 1995 Act 10 was adopted in 1995.

1995 through 2005 - \$350,000 Limit, declared unconstitutional in 2005:

In 1995, the legislature re-established a limit on the non-economic damages in 1995 Wisconsin Act 10 which was effective for cases filed beginning May 25, 1995. The allowable maximum of \$350,000 was to be adjusted for inflation. By 2005, the adjusted limit was \$445,755.

In 2000, the limit was affirmed by the Wisconsin Court of Appeals in *Guzman v. St. Francis Hospital*, 2001 WI App 21, 240 Wis.2d 559, 623 N.W.2d 776. The Wisconsin Supreme Court accepted a direct appeal of this case from the Milwaukee Circuit Court, but a 3-3 deadlock sent the case to the Court of Appeals. The Court of Appeals ruled that the damage limit was constitutional, that it did not infringe on the right to a jury trial and did not violate the doctrine of separation of powers.

In 2005, the Wisconsin Supreme Court decided that the damage limit was unconstitutional, finding that it violated the equal protection provision of the Wisconsin Constitution, was arbitrary and did not have a rational basis. *Ferdon v.*

Wisconsin Patients Compensation Fund, 2005 WI 1 25, 284 Wis. 2d 583, 701 N.W.2d 440.

Events of Alleged Medical Malpractice after April 5, 2006 - \$750,000 Limit:

Effective April 6, 2006, the legislature amended section 655.017 of the statutes and created section 893.55 (1d) which sets a limit of \$750,000 for non-economic damages for acts of medical malpractice that occur on or after April 6, 2006. 2005 Act 183. The Act requires that every two years the Board of Governors of the Injured Patients and Families Compensation Fund report to the legislature on whether changes should be made to that limit.