

Illinois Supreme Court Declares Statutory Limits on the Recovery of Non-Economic Damages Unconstitutional

Hinshaw Alert

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[*Lebron v. Gottlieb Memorial Hosp.*](#)

On February 4, 2010, in a widely anticipated decision, the Illinois Supreme Court struck down the statutory limits on the recovery of non-economic damages in medical malpractice actions. Relying on its 1997 decision in *Best v. Taylor Machine Works*, which invalidated a \$500,000 cap on non-economic damages in any common-law action, the Court in *Lebron* held that the cap on recoverable damages in malpractice suits violated the separation of powers clause of the Illinois Constitution.

The limitation on the amount a jury could award for non-economic damages (e.g., pain and suffering), which was struck down in *Lebron*, was the centerpiece of a series of reform measures targeted at reducing the financial burdens on physicians and hospitals, which had limited the availability of medical care in portions of Illinois. Those reform measures included revisions to expert witness standards in medical malpractice actions; enhancement of the state's regulation and ability to discipline physicians; creation of an Internet-based system for public access to physician's disciplinary histories; heightened oversight of medical insurance carriers; changes to required pre-suit affidavit and certificate of merit requirements; and the creation of an evidentiary rule allowing medical apologies.

Because the Act adopting these various reform measures contained a non-severability clause, the entire Act was invalidated by the Court's decision in *Lebron*. The Court noted that because it only substantively addressed the constitutionality of the damage caps, the legislature remained free to reenact any of these other reform measures that it deemed appropriate.

The opinion was written by Chief Justice Thomas Fitzgerald and was joined by Justices Freeman, Kilbride and Burke. Justices Karmeier and Garman wrote a dissent, which prompted a short rebuke by Justice Fitzgerald. Justice Thomas took no part in the decision.

To view a copy of the decision, [click on download PDF](#).

For further information, please contact [Steven M. Puiszis](#), [Stephen T. Moore](#), [Dawn A. Sallerson](#) or your regular [Hinshaw attorney](#).

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