

LEGAL ALERT

April 2003

MEDICAL MALPRACTICE UPDATE

COURT OF APPEALS RULES NON-ECONOMIC DAMAGES CAP DOES NOT APPLY TO WRONGFUL DEATH ACTIONS ARISING FROM ALLEGED MEDICAL MALPRACTICE

By: Jo Beth Earl and Brian A. Molde

Dear Readers: Our next quarterly edition of the Medical Malpractice Department Newsletter is not due out until May. However, we felt that this decision from the Court of Appeals warranted an interim update. We will resume our normal publication schedule in May.

The April 1, 2003 Court of Appeals decision in Jenkins v. Patel, 2003 WL 1733790 held that the Wrongful Death Act ("WDA") governs the award of non-economic damages in which a plaintiff alleges wrongful death arising from medical malpractice. In so holding, the Jenkins Court concluded that the medical malpractice non-economic damages cap (MCL §600.1483) does NOT apply to those cases.

The facts were as follows. The plaintiff filed suit for malpractice and wrongful death, obtaining a jury verdict which includes \$10,000,000.00 for non-economic damages. Defendants filed a motion for new trial or for remittitur, arguing that the medical malpractice damages cap required a reduction of the verdict and, in the alternative,

that the award was excessive. The trial judge ruled that the case was governed by the WDA, and the non-economic damages cap did not apply. While the judge agreed the award was excessive, he refused to grant a new trial or remittitur. The defendants then appealed.

The Court began its analysis by framing the issue as "whether the WDA governs an award of damages, as opposed to the damages cap, with respect to non-economic loss suffered in medical malpractice actions." Analyzing the respective statutes, the Court stated that "it is beyond dispute that the WDA applies in the context of an action for medical malpractice" while also stating that "§1483 applies in an action for damages alleging medical malpractice, and . . . [this] is such an action." Resolving these conflicting

statements, the Court found that the absence of a reference to loss of society and companionship in the damages cap statute was "express language...that indicates it does not apply in wrongful death actions." The Court then concluded that the absence of language typically used in statutes relating to wrongful death damages implied that the medical malpractice damages caps did not apply in wrongful death actions. Furthermore, the Court concluded that the failure to modify the damages cap statute in 1993 indicated the Legislature was aware of the wrongful death statute and did not wish to except medical malpractice actions from its reach.

In conclusion, the Court stated that "we find the WDA to be superior because it more specifically denotes the type of damages at issue."

Turning to the second issue, the Court held the trial court abused its discretion in failing to set a remittitur amount while refusing to grant a new trial. The case was remanded

for the trial court to set a remittitur amount, although it could also exercise its right to order a new trial on damages. Defendants filed a motion for rehearing regarding their

motion for new trial, and intend to appeal to the Supreme Court immediately thereafter. As a case of first impression, the Supreme Court will likely accept it.

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