

The Ever-Changing Caps on Non-Economic Damages for Medical Malpractice Cases in Missouri

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From the inception of an initial pleading until the final word of closing arguments, attorneys constantly assess, reassess, and re-reassess the “value” of their case based on each new piece of information that is introduced. While the term “value” can have any number of meanings (final ownership of a patent, full custody of a child, etc.), attorneys on both sides of a medical malpractice case assess value based on monetary damages.

While there are other types of damages recoverable in medical negligence cases, non-economic damages in medical malpractice lawsuits has been the subject of great discussion and evaluations, both literal and political, over the past thirteen years in Missouri. It goes without saying that the history of tort reform on this subject really begins in the early 1800s. However, for the purposes of this discussion, we will instead begin our historical discussion in this millennium.

In 2005, the Missouri legislature limited non-economic damages by lowering the caps to \$350,000 in the 2005 Tort Reform Act. Adjustments for inflation were eliminated and a single cap recoverable against all defendants in cases involving multiple defendants was introduced, essentially negating the discretion of a jury to enter an award it may determine to be adequate following trial.

Before the Reform Act’s seventh birthday, the Missouri Supreme Court struck down the non-economic caps. In 2012, led by late Chief Justice Richard B. Tietelman, the court in *Watts v. Lester E. Cox Medical Centers*, involving a non-death medical negligence personal injury claim, invalidated the non-economic damage cap set out in 2005 with its finding that the jury should be the entity that determines the amount of damages based on its assessment of the presented facts. The court held that enforcing the cap violated the Missouri state constitutional right to a trial by jury. *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. 2012).

Interestingly enough, the same court three months prior upheld the statutory cap in a wrongful death matter, *Sanders v. Ahmed*. As an explanation, the court stated that the action for wrongful death was provided by R.S.Mo. 537.080.01 (2000). "The legislature has the power to define the remedy available if it creates the cause of action." *Sanders v. Ahmed*, 364 S.W.3d 195, 203 (Mo. 2012).

In 2015, former governor Jay Nixon signed into law an amendment setting new damage caps with an annual adjustment. Lawmakers hoped that by specifying that medical malpractice cases were a statutory, rather than a common law cause of action, the courts would support it. The new law established caps on the amount of non-economic damages recoverable by a plaintiff in a medical malpractice action. For "non-catastrophic" injuries, the cap was initially established at \$400,000, while the cap for "catastrophic" injuries was set at \$700,000. To be more specific, R.S.Mo. § 538.205 defines a catastrophic injury as an injury resulting in quadriplegia, paraplegia, the loss of two or more limbs, significant and permanent cognitive impairment, irreversible failure of a major organ, or significant loss of vision.

The most important feature of this new law was the annual increase in the cap on non-economic damages. On January 1 of each year, both caps increase by 1.7%. R.S.Mo. § 538.210 (2015). For January 1, 2018 through December 31, 2018, the caps are as follows:

Non-catastrophic injuries: \$420,749

Catastrophic injuries: \$736,310

For those Plaintiffs' attorneys and fellow Defense attorneys planning for the future, please see this link for the estimated caps through the year 2050: <https://insurance.mo.gov/industry/medmal.php>

Spoiler Alert: The year 2050 will have high stakes at \$721,595 for non-catastrophic and \$1,262,791 for catastrophic and wrongful death.