SANDBERG PHOENIX

PHYSICIAN LAW BLOG

Medical Malpractice Damages Cap Heading Back to Supreme Court of Missouri

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In 2015, § 538.210 was amended in response to an opinion of the Missouri Supreme Court striking damage caps in medical malpractice cases. The constitutionality of damage caps in statutory wrongful death cases had been upheld, but those same caps were found unconstitutional in non-death medical negligence cases. Why? The Supreme Court reasoned that because wrongful death cases only existed because of a legislative act authorizing them, then the Legislature had the power to place limits on such claims, including limiting the recoverable damages. Non-death medical negligence actions, however, were a creature of the common law, pre-dating the Missouri Constitution, and thus could not constitutionally be limited by the Legislature. In other words, if the Legislature giveth, then the Legislature may taketh away.

Following this logic, the Legislature amended § 538.210 to abolish all common law causes of action asserting medical negligence and creating a statutory cause of action instead. In theory, because the exclusive vehicle for asserting a claim of medical negligence was now a creation of the Legislature, then the Legislature retained the power to impose damage caps.

On February 16, 2021, the Court of Appeals for the Western District of Missouri transferred *Velazquez v. Reeves et al.* to the Supreme Court of Missouri after deciding that the constitutionality of the new statutory cause of action was within the exclusive jurisdiction of the Supreme Court of Missouri. In *Velazquez,* the trial court held that the Legislature's abolishment of common law claims and replacement with a statutory claim was constitutional, and accordingly reduced the plaintiff's non-economic damages award to the statutory cap.

In the Western District's Order transferring the case, the Court identified the issue presented by *Velazquez*, "whether the legislature may constitutionally limit the damages recoverable on a cause of action which *did* exist at common law, but which has now been 'replaced' by a statutory cause of action."

With the transfer of *Velazquez*, the constitutionality of this legislative act will be put to the test. Interestingly, the Legislature's current effort to limit COVID-19 related claims is also premised on the creation and exclusivity of a statutory claim, so the reach of the Missouri Supreme Court's ruling could go beyond just medical negligence cases. Stay tuned.

A copy of the Western District's Order transferring *Velazquez* is linked here.