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PRACTICE AREAS

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Illinois Supreme Court Holds Medical Malpractice Cap Law Unconstitutional

Last Thursday, in [LeBron vs. Gottlieb Memorial Hospital](#), Docket No. 105741, the Illinois Supreme Court struck down the state's medical malpractice law, which imposed caps on damages awarded to victims. The now-overturned law, which was enacted in 2005, limited damages in medical malpractice actions to \$500,000 for pain and suffering and other non-economic damages of in cases against doctors and \$1 million for claims against hospitals.

The Court concluded that the medical malpractice law was unconstitutional since it violated the Separation of Powers clause of the [Illinois Constitution](#):

We hold that the limitation on noneconomic damages in medical malpractice actions set forth in section 2-1706.5 of the Code violates the [separation of powers](#) clause of the Illinois Constitution ([Ill. Const.1970, art. II, §1](#)) and is invalid. Because the Act contains an inseverability provision (Pub. Act 94-677, §995, eff. August 25, 2005), we hold the Act invalid and void in its entirety. We emphasize, however, that because the other provisions contained in Public Act 94-677 are deemed invalid solely on inseverability grounds, the legislature remains free to reenact any provisions it deems appropriate.

Insurers and defense counsel decried the decision, asserting that striking down medical malpractice caps will result in higher insurance premiums and a loss of physicians to states where caps on recovery are still imposed.

However, as explained in this [Chicago Tribune article](#), others hailed the



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decision as a victory for the poorest of medical malpractice plaintiffs, many of whom have difficulty obtaining representation because lawyers are hesitant to take cases due to lower potential recovery:

Damage caps hurt the most serious cases of medical negligence, said [Tom Baker](#), a professor at the [University of Pennsylvania](#) Law School and author of "The Medical Malpractice Myth." Personal injury lawyers are less likely to take cases from lower-earning people because the potential recovery is smaller when damages are limited to economic losses.

"Caps don't solve the problems of the medical liability system," Baker said. "Doctors still have tremendous distrust of the system. And people that are the most deserving don't get the money."

The debate over the necessity of medical malpractice damage recovery caps will no doubt continue, but for now, at least in Illinois, such caps don't apply, representing a strong victory for victims of medical malpractice.