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Couple challenges West Virginia malpractice award caps

A West Virginia couple who had been awarded more than \$1.5 million in damages in a medical malpractice case only to have the award cut by two-thirds is challenging the state law that caps medical malpractice payouts to victims.

The husband developed rhabdomyolysis after being given a combination of medications at a West Virginia hospital. A jury awarded the couple \$1.5 million for pain and suffering and \$129,000 for medical expenses and lost wages, greatly exceeding West Virginia's malpractice damages cap.

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The cap, originally \$1 million when enacted in 1986, has been cut repeatedly and now stands at \$250,000 for most cases and \$500,000 for the most severe. The cap applies no matter how many plaintiffs there are, so multiple plaintiffs have to split the award, which can be no more than \$500,000.

In the rhabdomyolysis case, the man was awarded \$1 million for his pain and suffering and his wife \$500,000, but their claim was reduced to \$500,000 in total for both of them. The couple is arguing that the damages cap is unconstitutional because it interferes with the right to a trial by jury and prevents the jury from making the ultimate decision in the case.

Lobbyists representing physicians and insurance groups have filed a brief in the case arguing that the caps should remain in place in order to keep malpractice insurance rates affordable and to prevent physicians from leaving the state. The case has been appealed to the West Virginia Supreme Court.

Source: [Renal and Urology News December 2010](#)

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