On February 4. 2010, the Illinois Supreme Court, in a 4 to 2 decision, struck down the legislative caps on non-economic damages in medical malpractice cases as an unconstitutional violation of the separation of powers between the judiciary and the legislature. Lebron v. Gottlieb Memorial Hospital, ___ Ill. 2d ___ (Nos. 105741 and 105745 cons. February 4, 2010). The full opinion can be found here: http://www.state.il.us/court/Opinions/Supreme court/2010/February/105741.pdf

Interestingly, the sole basis for the Court's decision is the separation of powers. The Court indicated that trial court judges have the inherent authority to correct an abnormally high jury verdict by exercising the power of remittitur. The Court reasoned that because this legislation forces judges to reduce any jury award on non-economic damages which is greater than the amounts indicated in the statute ($1 million against hospitals, $500,000 against doctors), this imposes on a judge's authority to determine whether an award is excessive.

My view: The Court's opinion is awkwardly decided and uncomfortably stretches the separation of powers doctrine to reach the result. The doctrine of remittitur is founded upon a judge's application of existing law relating to the total amount recoverable in damages, and if a judge decides the jury has improperly applied the current law of damages to award an excessive amount, the judge can reduce the verdict amount (or permit a new trial). The legislation capping non-economic damages set new law which the jury is to apply, so the judge's remittitur power is not really affected. Under the law, if a jury awarded an amount which was too high under the statute as applied (e.g., the pain and suffering award against a hospital for $1 million was excessive), then the statute does not affect the ability of the trial judge to remit the verdict under available law.

There are other potential bases for striking down the damages caps law but those did not form the rationale of this opinion. The Supreme Court should be honest about why it is striking something down.

The old law professor maxim is "bad facts make bad law."

Here, maybe it should be "bad law makes bad law."

See my blog at http://triallaw.wordpress.com/

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