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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Personal Injury Damage Caps: Maryland Considers Constitutionality

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Damage caps for [personal injury lawsuits](#) have been in the news a lot lately. For example, just a few weeks ago we [posted](#) about the recent Illinois Supreme Court decision, which held that the law capping recoveries in medical malpractice lawsuits was unconstitutional.

A similar law was at issue earlier this month in Maryland. On April 2nd, the Maryland Court of Appeals heard arguments in a case regarding personal injury damage caps. In the case being appealed, the parents of a young child who had drowned received a jury award of \$4 million for their pain and suffering, but the damages were reduced to \$1 million by operation of the damage cap laws. The specific issue considered by the court was whether jury awards for pain and suffering damage caps were constitutional.

As explained in this [Baltimore Sun article](#), caps in personal injury and medical malpractice lawsuits are more common than not in many states:

Maryland is one of at least 36 states that have established such ceilings in at least some kinds of cases – such as medical malpractice, personal injury or wrongful-death suits – according to the National Association of Mutual Insurance Companies. The industry group filed a brief in the [Freed's](#) appeal supporting Maryland's cap.

Limits on awards have compiled a mixed record in the courts. State courts in Alaska and Ohio have upheld restrictions in those states. This year, courts in Illinois and Georgia have overturned caps in those states.

The article also explains the reason for the opposition to caps on damages for pain and suffering—that they discriminate against those who are most severely injured:



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A plaintiff whose award falls within the limit may collect the full judgment, but one who is awarded an amount exceeding the cap for having suffered severe harm – the death of a child, for example, or a life of physical pain – may not.

In our experience, cases where children are injured are the most heart wrenching, since it is extremely difficult to predict how much income a young child would have earned over the course of his or her lifetime. Thus the amount of economic damages that can be determined is usually minimal and pain and suffering damages are far more likely to awarded by a jury.

So, in cases where a child is severely injured or dies, limits on damages for pain and suffering can have a devastating effect. For that reason alone, damage caps are ill advised.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) specializes in workers' compensation and personal injury law. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.