

The Fate of Michigan's Cap on Noneconomic Damages Lies in the Hands of the Supreme Court

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A major part of Michigan's 1995 Tort Reforms was the Legislature's creation of caps on noneconomic damages. These caps are codified in MCL 600.1483 and 600.2946a and apply to medical malpractice and product liability cases. For nearly 30 years, these laws operated to reduce the amount of damages a plaintiff may recover as a result of negligence by physicians, hospitals, or medical providers in malpractice and product liability lawsuits for noneconomic damages, such as pain and suffering, physical impairment, loss of society and companionship, amongst other intangible losses. The law provides for two caps on these types of damages, subject to annual adjustments: the low cap is currently set at \$569,000; and the high cap is currently at \$1,016,000. The applicable cap is determined by the type of injuries sustained. The caps on noneconomic damages rightfully protect defendants from excessive and unsupported jury verdict awards for noneconomic damages.

However, for nearly as long as these laws have been on the books, attorneys have argued that the damages caps disproportionately impact plaintiffs who have suffered severe and lifelong injuries and impair their right to seek just compensation from a jury of their peers for pain and suffering. The opposition has also argued that the damages caps are unconstitutional as they strip away a jury's ability to assess plaintiffs' circumstances on a case-by-case basis making damage awards based on the particular facts in each case. On November 8, 2024, Judge Gershwin A. Drain of the United States District Court for the Eastern District of Michigan certified the question of whether Michigan's caps on noneconomic damages violate Michigan's Constitution to the Michigan Supreme Court. *Whitney Beaubien, as Personal Representative of the Estate of Craig A Beaubien v. Charu Trivedi, et al.*, No. 21-CV-11000, 2024 WL 4751578 (ED Mich., Nov 8, 2024). Specifically, Judge Drain certified the following issue:

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Following major tort reforms in 1995, Michigan laws have placed a cap on the amount of noneconomic damages a plaintiff can recover in medical malpractice and product liability cases. See MCL 600.1483 and MCL 600.2946a, respectively. These damage caps have rightfully protected defendants from excessive and unsupported damage awards for pain and suffering, inconvenience, physical impairment, loss of society and companionship, and other types of noneconomic damages.

However, the plaintiff in *Whitney Beaubien, as Personal Representative of the Estate of Craig A Beaubien, v. Charu Trivedi, et al.*, No. 21-CV-11000, 2024 WL 4751578 (ED Mich., Nov 8, 2024), a recent medical malpractice lawsuit brought in the Eastern District of Michigan, successfully called into question the constitutionality of Michigan's statutory cap on noneconomic damages. This has resulted in the federal district court judge certifying those questions to Michigan's Supreme Court. The fate of Michigan's noneconomic damages caps now lies in the hands of our state Supreme Court, a court which does not shy from issuing seminal decisions involving major principles of our state's jurisprudence, some of which have altered areas of law that many argue have been well-settled for decades.

“whether, under the Michigan Constitution, [MCL 600.1483’s] noneconomic damages cap violates (1) the right to trial by jury, (2) the equal protections clause, and (3) the separation of powers clause.” [*Id.*, slip copy p 20.]

In this medical malpractice case, brought in federal court based on diversity jurisdiction, the Plaintiff sued the Toledo Clinic, Inc., and Dr. Trivedi, an employee and board-certified hematologist and oncologist of the clinic, alleging that the Defendant “breached the standard of care for [Plaintiff] by failing to recognize that the polycythemia she was treating him for could have been secondary to [renal cell carcinoma].” *Id.*, slip copy p 4. The case was tried before a jury and the jury returned a verdict in favor of the Plaintiff, awarding \$6.5 million in noneconomic damages, \$115,841.98 for economic damages, and \$2 million for loss of consortium. *Id.* In post-verdict motions, Plaintiff sought entry of a judgment for the total \$8,615,841.98 in damages. *Id.* In response, the Defendant argued that MCL 600.1483’s cap required the Court to reduce the \$6.5 million dollar noneconomic damages award. *Id.*

In response to the Defendant’s claim that the noneconomic damages award exceeded the cap amounts set forth in MCL 600.1483, Plaintiff argued that the damages cap violated Michigan’s Constitution. *Id.*, slip copy p 5. The Plaintiff specifically argued that Michigan’s damages cap “violates her right ‘to have the existence and amount of damages determined by a jury,’ with the statute ‘usurp[ing] the jury’s factfinding role.’” *Id.*, slip copy p 5. The Plaintiff further argued that the damages cap violates the equal protections clause because it “impinges upon her right to a trial by jury,” which is a fundamental right under Michigan’s Constitution, and because the statute “creates an impermissible classification scheme by arbitrarily distinguishing between (1) medical malpractice plaintiffs with serious injuries and those with relatively minor injuries; (2) medical malpractice plaintiffs as opposed to those injured through other forms of negligence; and (3) medical malpractice tortfeasors whose negligence is the most serious.” *Id.* Finally, Plaintiff argued that the damages cap violates the separation of powers clause “because it intermeddles with the affairs of the judiciary.” *Id.*, slip copy p 6.

Finding a lack of available case law concerning Michigan’s cap on noneconomic damages, Judge Drain certified the question of its constitutionality to the state Supreme Court, noting that “[w]hen presented with an issue concerning the interpretation of a state law, a federal court’s normal course is to ‘make an *Erie* guess to determine how [a state supreme court], if presented with the issue, would resolve it.’” *Id.*, slip copy p 7, quoting *In re Nat’l Prescription Opiate Litig.*, 82 F4th 455, 461 (CA 6 2023). “If, however, that issue is novel or unsettled, a federal court has the discretion to request that a state’s highest court provide the definitive state-law answer through certification.” *Id.*, citing *Lehman Bros v Schein*, 416 US 386, 391 (1974)).

On Plaintiff’s constitutional challenges to MCL 600.1483, Judge Drain determined the issues to be “unsettled” by Michigan case law. Although the Defendant argued that the issues were settled in *Phillips v Mirac, Inc.*, 470 Mich 415 (2004), which held that the statutory cap for lessor’s liability in motor vehicle leases of 30 days or less under MCL 257.401(3) were constitutional, Judge Drain noted that the central reasoning in *Phillips* – that application of a damages cap is an issue of law for the Court, not the jury – “is in tension with” several Michigan Supreme Court decisions. *Beaubien*, slip copy p 11. Judge Drain cited five cases dating back to 1924, where Michigan’s Supreme Court held that the “right to have a jury determine the damages a plaintiff is entitled to” is a protected right under the state constitution. *Id.*, slip copy 12 (citing *Leary v Fisher*, 248 Mich. 574, 578 (1924), and *Aho v Conda*, 347 Mich 450, 455 (1956), amongst others). According to those cases, Michigan’s Supreme Court has held that the determination of damages is a fundamental question for the jury, not the court. *Id.* Judge Drain also found that *Jenkins v Patel*, 471 Mich 158 (2004), which held that the “noneconomic damages cap is applicable to wrongful death actions where the underlying claim is medical malpractice,” did not address the statute’s constitutionality, but rather, involved a statutory interpretation of the interplay between MCL 600.1473 and MCL 600.2922(6). *Beaubien*, slip copy p 18.

As a result of Judge Drain certifying the constitutional questions regarding Michigan’s cap on noneconomic damages in this medical malpractice case, the Michigan Supreme Court is now poised to decide if such damages caps are constitutional. The Supreme Court’s eventual decision could have a sweeping impact on the defense of medical malpractice and product liability cases, which for nearly 30 years, were subject to noneconomic damages caps.

Secret Wardle is closely monitoring *Beaubien v. Trivedi, et al.* and will provide additional updates and analysis following any further action or decision by Michigan's Supreme Court.

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