



A Victory for Doctors and Patients Alike

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Last week, the Missouri Supreme Court ruled on the case *Klotz v. Shapiro*, which challenged the 2005 tort reform legislation and its \$350,000 cap on non-economic damages. The court unanimously declared that state caps on non-economic damages cannot be applied retroactively, but did not declare the caps themselves unconstitutional. This is a big victory for both doctors and patients in Missouri, which is one of several states in which caps on non-economic damages have been challenged in the courts. Just the day before this decision came from the Missouri Supreme Court, the Georgia Supreme Court unanimously overturned the pain and suffering caps that were implemented in 2005. Earlier this year, the Illinois Supreme Court also struck down a law that provided for such caps. We are lucky that Missouri did not follow suit.

In 2004, the Congressional Budget Office conducted [a review of nine studies](#) that looked at the effects of tort reform. The review notes that studying tort reform is difficult because of the many types of reform and the issue of controlling for differences between states, but it does present some evidence in favor of imposing caps on non-economic damages. Of the three studies that examined this specific type of reform, two found that premiums declined significantly for at least some insurance lines (the other one found no significant effect).

These three studies also found that insurers' profitability increased after the imposition of caps. Contrary to what some politicians may have you believe, this is a good thing. Health insurance profit margins are typically about 6 percent, give or take a few points, which is very low compared to other forms of insurance. Increased profitability for health insurance companies allows for more firms to survive and compete for business, which will drive down costs and make insurance more affordable.

Opponents of caps on non-economic damages would probably point to this same CBO study, which also points out that malpractice costs account for less than 2 percent of health care spending. But this does not take into account the amount of defensive medicine that is practiced by physicians on a daily basis. According to [this Gallup poll](#) of 462 randomly selected U.S. physicians, one in four health care dollars is spent on defensive medicine. The study defined defensive medicine as "the practice of diagnostic or therapeutic measures conducted primarily not to ensure the health of the patient, but as a safeguard against possible malpractice liability. This may include tests, prescriptions, hospitalizations and referrals that may not be medically necessary, but are viewed as providing protection from a potential lawsuit."

As demonstrated by this survey, this is a very real phenomenon. For example, a young female who complains of frequent headaches might get a brain MRI to rule out a tumor, even though she is young and has minimal risk factors. The only way to *legally* and definitively say that there is no tumor is by using an MRI, even though clinical suspicion is low and does not warrant the scan. So in a case like this (a real example provided to me by a medical student), legal implication trumps clinical judgment, and the unnecessary tests that result then drive up the cost of health care. Caps on non-economic damages mean that doctors can reduce the amount of defensive medicine they practice, because they know they're not subject to the arbitrary determinations of juries about how much a plaintiff may deserve in compensation. They can instead focus on using their clinical training to make the proper diagnoses and do their jobs as doctors.

Another tangible benefit of imposing caps on non-economic damages is the increased physician supply that occurs as a result. A study published in 2005 looked at the impact of caps on non-economic damages from 1985 to 2000, and concluded that caps increased the per-capita supply of physicians by 2.2 percent relative to states without caps (another study put this number at 2.4 percent; these studies were summarized by the American Medical Association in [this report](#)). Missourians will therefore have greater access to care as a result of the court's decision in this case.

Unfortunately, because the court did not specifically invalidate the plaintiff's other complaints about the 2005 tort reform bill's supposed unconstitutionality, the door is open for more challenges in the future. Let us hope that any such challenges are rejected.

About the Author



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