

MEDICAL DEFENSE AND HEALTH LAW

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The Missouri Supreme Court recently affirmed the constitutionality of non-economic damages caps under statutory claims for medical malpractice. The ruling also held that applicable cap amount is determined at time damages are assessed, not date of alleged malpractice.

Missouri Supreme Court Upholds Non-Economic Damages Caps for Medical Malpractice Cases

ABOUT THE AUTHORS



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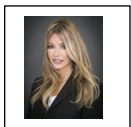
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Maureen Bryan is a partner at Armstrong Teasdale and leader of the firm's Health Care and Life Sciences industry team. She defends clients in litigation alleging catastrophic injuries as a result of medical malpractice, products liability and premises liability, and is in part responsible for many of Missouri's top ranking defense verdicts. She also represents clients in matters involving HIPAA, the Office for Civil Rights (OCR), and breach of protected health information. She can be reached at mbryan@atllp.com.

ABOUT THE COMMITTEE

The Medical Defense and Health Law Committee serves all members who represent physicians, hospitals and other healthcare providers and entities in medical malpractice actions. The Committee added a subcommittee for nursing home defense. Committee members publish monthly newsletters and *Journal* articles and present educational seminars for the IADC membership at large. Members also regularly present committee meeting seminars on matters of current interest, which includes open discussion and input from members at the meeting. Committee members share and exchange information regarding experts, new plaintiff theories, discovery issues and strategy at meetings and via newsletters and e-mail. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

On July 22, 2021, the Missouri Supreme Court handed down its opinion in *Velazquez v. University Physician Associates, et al.*, No. 98977. The Court's ruling establishes precedent on two key issues related to the non-economic damages caps set forth in § 538.210, RSMo. for actions against health care providers for damages for personal injury arising out of the rendering or failure to render health care services.

The Court's opinion affirmed the non-economic damages caps in their entirety, holding that the Missouri Legislature's amendment of certain statutes in 2015 replacing a common law cause of action for medical malpractice with a statutory cause of action was constitutional. The Court stated that the General Assembly possesses the power to abolish common law causes of action, and in keeping with the Court's prior decision in *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2021), a cap on non-economic damages for the *statutory* cause of action does not violate article I, § 22(a) of the Missouri Constitution. As a result, the non-economic damages caps are no longer susceptible to constitutional challenges by plaintiffs.

The Court's opinion follows more than a decade of legislative changes, institution of non-economic damages caps in medical malpractice settings, abrogating of those caps, and replacement of the common-law claim for the statutory claim. The key issue facing the Court was whether the Missouri Legislature could replace a common-law

cause of action with a statutory action. The Court previously held non-economic damages caps for medical malpractice unconstitutional in *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. banc 2012), holding that the statutory cap violated the right to trial by jury set forth in the Missouri Constitution because the common-law claim for medical negligence existed at the time of the Missouri Constitution's ratification. *See id.* at 638-39. The Court stated that the statutory caps in place at that time operated "wholly independent of the facts of the case," and infringed on the right to trial by directly curtailing the jury's determination of damages. *See id.* at 640. Due to statutory damage caps not being permissible in 1820, the Court ruled they continued to be inadmissible in *Watts*, and the caps were abrogated. *See id.*

Following the *Watts* decision, the Court later reviewed non-economic damages caps in *wrongful death* cases involving medical negligence in *Sanders*. The issue faced by the Court there was whether those caps were unconstitutional in the same manner as the other non-wrongful death non-economic damages caps. In *Sanders*, the Court reached a different conclusion than *Watts* based on the nature of the claim, holding that wrongful death as a statutory cause of action did not exist at common law when the Missouri Constitution was ratified, unlike common-law medical negligence claims. *See Sanders*, 364 S.W.3d at 203. Given the wrongful death claim was a legislatively

created cause of action, the Court held that the legislature “has the power to define the remedy available if it creates the cause of action,” thus the legislature could place limits on the amount of non-economic damages recoverable under the statutory cause of action. See *Sanders*, 364 S.W.3d at 203-04.

Faced with these two precedents, the Missouri General Assembly amended Section 538.210 of the Missouri Statutes in 2015 to expressly replace a common-law cause of action for “personal injury or death arising out of the rendering of or failure to render health care services,” with a *statutory* cause of action. § 538.210.1, RSMo. (2015). Section 538.210, as amended, then instituted non-economic damages caps for medical negligence claims, calculated at no more than \$400,000 for non-catastrophic injuries and no more than \$700,000 for catastrophic injuries. Those baseline amounts were further adjusted with a cost-of-living escalator provided in Section 538.210.8.

The *Velazquez* case sought to abrogate the new 2015 statutory caps by essentially making the same argument advanced in *Watts*; that the existence of a medical negligence cause of action at common law in 1820 did not allow for future legislative limitations like those found in the amended statute. The Court, following prior precedent set forth in *Dodson v. Ferrera*, 491 S.W.3d 542 (Mo. banc 2016), determined that the appellant’s argument that *Watts*, not *Sanders*, controlled the Court’s review was

incorrect. Rather, the Court held, following *Dodson*, that the General Assembly could replace a cause of action, and by replacing the common-law medical negligence claim with a new statutory claim in 2015, the legislature was further constitutionally allowed to place damages limits in the same manner previously approved for statutorily created wrongful death claims.

In addition to affirming the statutory damages caps, the Missouri Supreme Court’s ruling also clarified that that calculation of the applicable non-economic damages cap – given cost-of-living escalators on an annual basis – is based on the time of trial, not the time of injury. The Court determined that that the non-economic damages cap applies to the award at trial, not the underlying malpractice, therefore confirming that the caps apply to *damages* awarded on or after its effective date, even if the malpractice took place prior to the effective date. Such an application, the Court ruled, was consistent with the General Assembly’s clear legislative intent to protect a plaintiff’s non-economic damages award from inflation, and that the “practical effect of that subsection” requires applying the cap at the time of trial, not at the time of alleged malpractice. This clarification should serve to prevent plaintiffs from asserting that non-economic damages caps do not apply where the date of injury is prior to the effective date of the statute.

The Court’s ruling in *Velazquez* resolves lingering questions about the constitutionality of current Missouri non-

economic damages caps, and may be instructive in evaluating other states' damages caps to the extent similar constitutional issues are at play. The ruling on application of the caps at the time damages are awarded, irrespective of the

date of alleged malpractice, may also provide practitioners with arguments under other statutory regimes including similar damages escalators.

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