

September 13, 2010

**Public Justice has just filed an *amicus* brief urging the West Virginia Supreme Court to strike down the state's statutory cap on non-economic damages as unconstitutional under the state constitution.** The plaintiffs in *MacDonald v. City Hospital* were awarded \$1.5 million by a jury for their non-economic damages, only to have the judge cut their award to \$500,000 under the damages cap.

James MacDonald, a semi-retired schoolteacher who had been diabetic since childhood, was taking an immunosuppressant and cholesterol medication when he sought treatment for flu-like symptoms at City Hospital in Martinsburg, West Virginia. He was subsequently diagnosed with pneumonia, and the attending physician at City Hospital prescribed an antifungal. But then Mr. MacDonald became increasingly ill with what was later determined to be rhabdomyolysis -- a condition in which muscle tissues break down, causing severe weakness, muscle damage, pain, and life-threatening effects on kidney function. He had to be hospitalized for several months and needed extensive in-patient rehabilitation in order to regain any ability to walk. As of this appeal, Mr. MacDonald still relies on a four-pronged cane, cannot walk very far, has difficulty maintaining balance, and has fallen repeatedly.



Mr. MacDonald and his wife sued City Hospital and its attending physician, alleging that Mr. MacDonald's rhabdomyolysis was caused by the erroneous prescription of the antifungal with the other two medications. At trial, the MacDonalds presented extensive evidence that combining those three drugs creates a known risk of developing rhabdomyolysis and that the dangers of this drug interaction has been well-known for years. **After a full trial, the jury returned a verdict for the MacDonalds. In addition to damages for medical expenses and lost wages, they awarded \$1 million to Mr. MacDonald for pain and suffering and \$500,000 to Mrs. MacDonald for loss of consortium.**

**However, citing West Virginia's damages cap, the trial judge then reduced the noneconomic damages award to a total of \$500,000, cutting Mr. MacDonald's damages in half and wiping away Mrs. MacDonald's claim altogether.** The MacDonalds have appealed to the West Virginia Supreme Court, arguing that the state's cap on noneconomic damages violates several provisions of the state constitution.

**We weighed in to argue that the damages cap disproportionately affects women, seniors, children, and people with disabilities, whose injuries are likely to be primarily noneconomic.** Our brief argues that the cap violates the state constitution's guarantee of equal protection by discriminating against non-wage earners such as young children and seniors, whose losses are more difficult to quantify in economic terms such as lost income. In addition, because women still earn less than men, their damages awards in medical malpractice cases are demonstrably lower than men's in states that cap non-economic damages. We also explain how damages caps make it harder for victims to retain counsel and create a disincentive for health care providers to effectively address preventable medical errors --threatening both access to quality medical care and access to justice.

To read our *amicus* brief, [click here](#).

Coordinator -- and his associate Stacy Jacques, who authored the *amicus* brief with input from Staff Attorney Leslie Bailey, and to Public Justice Foundation President Harry Deitzler of Hill, Peterson, Carper, Bee & Deitzler, who is co-counsel for Public Justice on the brief. Thanks also to Public Justice Foundation Board Member Chris Nace, former Board Member Barry Nace, and Bob Peck of the American Association for Justice's Center for Constitutional Litigation ("CCL"), who represent the MacDonalds.

And, of course, thanks to you for making this important work possible. Together, we can -- and must -- preserve access to justice for all.

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**P.S. Please forward this email to friends and colleagues who'd be interested. (When you do so, delete the information below about unsubscribing, or they could unsubscribe you.) To make a special contribution, renew your membership or join us, [click here](#).**

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