



Non-economic damage caps

by John D. Whitaker

I was trying a personal injury case several years ago when the lawyer for the defendant got up and told the jury that the hideously disfigured fibula which appeared on the x-ray of my client's leg was "not really all that bad." When he sat down, I got up and told the jury that whether the break was bad or not depended a lot upon whose leg it was. I must admit to a certain bias here because I have spent most of my professional life representing people who have been injured by the wrongful conduct of other people. It seems that injuries are generally much less painful when they happen to someone else. I think that is why no one gets too upset when we talk about limiting damages in a general sense. In this context, we are not focused on how the limits may affect us or a member of our family personally.

With that thought in mind, today I want to talk about the Wyoming Legislature's current task of dealing with the medical malpractice insurance issue. One of the main proposals under consideration is to ask the voters to approve a constitutional amendment which would allow the Legislature to place a cap on non-economic damages. If the voters approve the amendment, the Legislature would be free to impose an arbitrary limit on the amount a jury can award for non-economic damages in medical malpractice cases.

Presently, both the United States and the Wyoming constitutions prohibit laws like this.

Caps would not affect a jury's ability to set the level of economic damages in malpractice cases. These damages include lost wages, medical bills, and cost associated with care taking which result from the



malpractice.

The caps would only affect non-economic damages. These damages include things like pain and suffering, disability and disfigurement, and loss of enjoyment of life. This element also includes damages for the loss of care, comfort and society that your family members may suffer from your injury or death.

Under the present system, juries are instructed that there is no formula available to compute non-economic damages.

The jury is instructed that the amount to be awarded rests within their sound discretion, and they are told that they should consider an amount of money which will fairly and adequately compensate the injured person given their knowledge, observations and experiences in life. Our Constitution now requires that these damages are to be determined by the members of our community, not the legislature. This has been the law in Wyoming for over 100 years.

We all want to make sure we have quality health care here in Wyoming, and there are several proposals including a plan to subsidize those physicians who truly need help or to set up a state fund to provide malpractice coverage for our physicians. Some of these proposals would directly solve the problem, and they do not require that we surrender our Constitutional rights to the Legislature. Before we amend the Constitution, we should make sure that imposing caps on non-economic damages will lower insurance rates. So far, no one has proven that caps will do that.

I think it is important to keep in mind that we are now talking about your leg here. Do you feel confident that the Legislature can feel your pain? Keep listening.