



Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 914N.W.2d 678 (Wis. 2018)

Topics Covered: Professional Liability, Tort Reform

Outcome: Very Favorable

Issue

The issue in this case was whether the Wisconsin statutory cap on non-economic damages was constitutional against a challenge that it was invalid either on its face or “as applied”.

AMA Interest

Medical liability reform is a high legislative priority for the AMA.

Case Summary

Ascaris Mayo presented at the emergency room of Columbia St. Mary’s Hospital in Milwaukee, complaining of abdominal pain. The emergency room physician determined that her condition was not serious and discharged her. Shortly after she returned home, however, she collapsed. She was brought back to the hospital, and this time she was diagnosed as being in septic shock as a result of a severe streptococcus infection. She was transferred to a different hospital, where she underwent quadruple amputation of her arms and legs.

Mrs. Mayo and her husband, Antonio Mayo, sued the hospital, the emergency room physician, another hospital employee, the hospital’s primary insurance carrier, and the Fund. They claimed that the hospital and its employees had failed to order the necessary laboratory tests, failed to recommend hospitalization, failed to prescribe appropriate antibiotics, and failed to explain the possibility of infection and the associated risks to Mrs. Mayo when she was discharged from the hospital. Mr. Mayo claimed a loss of spousal services on account of Mrs. Mayo’s injuries.

The Fund appealed to the Wisconsin Court of Appeals, which actually went further than the trial court in invalidating the damages cap. It held that the cap was unconstitutional on its face as a denial of equal protection. It did not reach the question of “as applied” invalidity, since the facial invalidity necessarily meant that every application of the cap would be invalid. Also, it did not discuss the due process challenge beyond a footnote which observed that the due process analysis would be “substantially similar” to the equal protection analysis.

A concurring opinion agreed with the trial court. It found that, facially, the cap was valid. However, because Mrs. Mayo’s injuries were so extreme, the cap was invalid as applied to her. Following a petition by the Fund, the Wisconsin Supreme Court agreed to review the case.

On June 27, 2018, the Supreme Court reversed the trial court and the Court of Appeals. It held that the damages cap should be analyzed under a rational basis test, and under that standard it was constitutional. In so holding, the Supreme Court overruled an earlier decision.

Litigation Center Involvement

The Litigation Center, along with the Wisconsin Medical Society (WMS) and the Wisconsin Hospital Association, filed an *amicus* brief in the Court of Appeals to argue in favor of the damages cap. The Litigation Center and WMS also filed an *amicus* brief in support of the Fund's petition for Supreme Court review. In addition, the Litigation Center and WMS filed an *amicus* brief on the merits, seeking to preserve the damages cap, in the Supreme Court.

Wisconsin Court of Appeals brief

Wisconsin Supreme Court brief (petition for review)

Wisconsin Supreme Court brief (merits)