

# CLINE WILLIAMS

## WRIGHT JOHNSON & OLDFATHER

### **EIGHTH CIRCUIT UPHOLDS NEBRASKA'S CAP ON MEDICAL MALPRACTICE DAMAGES**

The United States Court of Appeals for the Eighth Circuit recently upheld the constitutionality of Nebraska's cap on medical malpractice damages.

In 1976, Nebraska enacted the Nebraska Hospital-Medical Liability Act. Among other things, the Act caps the amount of damages that medical malpractice plaintiffs can recover against defendants that are covered by the Act. While the amount of the cap has been periodically adjusted, it has remained in place in some form since the Act's passage. Currently, the cap limits damages to \$2.25 million.

In a recent case in the United States District Court for the District of Nebraska, a jury awarded plaintiffs a \$17 million verdict, but the court reduced the verdict to \$1.75 million, the maximum amount that could be awarded under the cap between 2004 and 2014. Plaintiffs appealed to the Eighth Circuit, arguing that the cap violated their rights under the United States Constitution.

In a June 22, 2017 opinion, the Eighth Circuit rejected Plaintiffs' constitutional challenges to the cap. See Schmidt v. Ramsey, 860 F.3d 1038 (8th Cir. 2017). It held that the cap did not violate Plaintiffs' Seventh Amendment right to a jury trial, Fifth Amendment right not to have property taken without just compensation, and Fourteenth Amendment rights to equal protection and due process of law.

The Eighth Circuit explained that the cap did not violate Plaintiffs' Fourteenth Amendment rights because "Nebraska's goal of capping malpractice damages to reduce insurance costs to make the State more attractive to doctors is rational." Cline Williams submitted an amicus brief in Schmidt and provided historical background regarding Nebraska's cap and pointed to empirical evidence that indicates that the cap serves important objectives such as encouraging physicians to locate and practice in Nebraska and improving the availability and affordability of both medical malpractice insurance and medical services in Nebraska.

While many federal courts have upheld medical malpractice caps in constitutional challenges, a number of state courts have ruled that caps are unconstitutional. Just last month, a Wisconsin intermediate appellate court held that a Wisconsin statute, which limited the amount of noneconomic damages medical malpractice plaintiffs could recover, was unconstitutional. See Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 2017 WL 2874614 (Wis. Ct. App. 2017).

For additional information or if you have any questions, please contact a member of Cline Williams' Healthcare Section:

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