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Public Justice Urges West Virginia Supreme Court to Strike State Law that Caps Non-Economic Damages

In a case involving a man who fell seriously ill after taking an erroneously prescribed medication, Public Justice has 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 noneconomic 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 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.

MacDonald still relies on a four-pronged cane, cannot walk very far, has difficulty maintaining balance, and has fallen repeatedly. He 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. In addition to damages for medical expenses and lost wages, the jury awarded MacDonald \$1 million for pain and suffering and \$500,000 to Mrs. MacDonald for loss of consortium.

But, citing West Virginia's damages cap, the trial judge reduced the noneconomic damages award to a total of \$500,000, cutting 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.

In its brief, Public Justice argues that the damages cap disproportionately affects women, seniors, children, and people with disabilities, whose injuries are likely to be primarily noneconomic. The 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.

Public Justice also explains 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.

The Public Justice brief was authored by Troy Giatras and Stacy Jacques of The Giatras Law Firm in West Va., with input from Public Justice Staff Attorney Leslie Bailey. Public Justice Foundation President Harry Deitzler of Hill, Peterson, Carper, Bee & Deitzler in Charleston, West Va., is co-counsel for Public Justice on the brief.

The MacDonalds' counsel are Public Justice Foundation Board Member Chris Nace, former Board Member Barry Nace, Bob Peck of the American Association for Justice's Center for Constitutional Litigation, and D. Michael Burke of Burke, Schultz, Harman and Jenkinson.

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