

## The Truth About Damage Caps in Medical Malpractice Cases

Damage caps hurt the most catastrophically injured and do not help doctors. No rationale in favor of caps has received greater attention than claims that doctors are fleeing from states without non-economic damage caps. Under the proponent's theory, caps deter frivolous medical malpractice claims, which they claim are largely responsible for causing doctors' insurance premiums to rise. Their hypothesis, however, is clearly wrong.

Medical malpractice cases are extremely expensive to litigate and have a low likelihood of success. Typically, in addition to the costs attendant in any personal injury case, the plaintiff's lawyer must pay at least one, and often more than one, medical expert a fee resulting in tens of thousands of dollars in expenses to testify about whether the treating physician departed from the relevant standard of care. Even then, medical malpractice plaintiffs succeed in only 29% of the cases, well below the 47% success rate experienced in the typical personal injury case. Because medical malpractice cases cannot even be filed without a supporting affidavit from a healthcare professional validating the merits of any allegation against a doctor or hospital, the myth of frivolous lawsuits is just that – a myth. The contingency fee system also operates as a screening mechanism that prevents cases without a likelihood of success from being filed.

Moreover, the supposed solution – caps on economic damages – does not adversely affect frivolous cases as they simply are not filed with the system already in place. They only hurt meritorious cases where there is little economic damages, such as cases where a young child, elder parent, or homemaker dies. These cases must overcome the multiple obstacles of screening panels, Daubert challenges, the burden of proof and well mounted defenses to convince skeptical juries that liability should lie and that damages should be awarded. Even then, damage caps only affect the most catastrophically injured patients, whose non-economic claims surpass the cap.

### More Doctors, Fewer Lawsuits

Nationally, medical malpractice filings have decreased while the number of doctors has increased:

The number of physicians in the United States has steadily increased from 268 per hundred thousand population in 1996 to 285 per hundred thousand population in 2002.

From 2000 to 2002 the three most recent years of data available the rate of physicians has risen in every single state.

Medical malpractice filings per hundred thousand population have fallen by 1% since 1998.

NOTE: The accounts of recent trials, verdicts and settlements contained in this Newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

  
**PANTER, PANTER  
& SAMPEDRO, P.A.**

PANTER BUILDING  
6950 NORTH KENDALL DRIVE • MIAMI, FLORIDA 33156

PRSR STD  
U.S. Postage  
PAID  
MIAMI, FL  
PERMIT NO. 3203



  
**PANTER, PANTER  
& SAMPEDRO, P.A.**

**Briefs**  
PANTER, PANTER & SAMPEDRO, A LAW FIRM  
DEDICATED TO PROTECTING FLORIDA'S FAMILIES  
Volume IX, 2005

PANTER BUILDING ■ 6950 NORTH KENDALL DRIVE ■ MIAMI, FLORIDA 33156 (Corner of Kendall & US 1)  
Telephone: (305) 662-6178 ■ Toll Free: (800) 593-6178 ■ Fax: (305) 662-9472 ■ www.panterlaw.com

## Dangerous Construction Results in Over \$2 Million Settlement

On September 23, 2002 Mr. R, a hard working married man and father of two young children was part of a crew building large estate homes in a private and secluded community. Unfortunately for Mr. R, the developer and builder failed to supervise the safety, means and methods of how their contractors built the homes. The developer and owner also failed to provide proper safety equipment leaving Mr. R and the small company for which he worked without the tools necessary to safely complete the roof of the home on which he was working. As a result of needing to meet the developer's demands and not having the proper safety equipment, Mr. R fell approximately 15 feet to the ground. Mr. R was injured and became a paraplegic and lost his ability to earn a living and provide for his family.

Attorney Robert Wayne, a wellknown lawyer and fellow pilotcontacted Brett Panter and asked him if he could represent the R Family. Mr. Panter was

determined to help them out of their financial crisis and to seek compensation in what was a very complex case.

Generally, an injured worker is unable to sue the general contractor, and his only remedy is to file a worker's compensation claim. In this case worker's compensation paid over a million dollars of benefits and had a lien on the third party claim. Nevertheless, Brett Panter assembled a team including the appellate firm of Hicks and Kneale and and numerous liability experts. Together, they successfully brought a claim against the owner and developer of the project. Brett Panter has handled numerous cases involving issues relating to defeating the exclusivity of worker's compensation and was familiar with the necessary elements to prove this case.

As a result of significant legal efforts the case was partially settled with one of the defendants for over \$2 Million (present value). Mr. R and his family will



receive more than \$2 Million in guaranteed payments over his lifetime, which will provide Mr. R and his family, future financial security. In addition to the settlement, Mr. Panter is continuing with this case against other defendants. Considering the catastrophic nature of the damages, the case has more work to be done, to provide the R family with continued financial security for the difficulties that they will encounter throughout their lives.

Mr. Panter would like to thank the R family and attorney Robert Wayne for entrusting him with this most significant and important case.

## Panter, Panter & Sampedro Receives AV Rating from Martindale-Hubbell

The law firm of Panter, Panter & Sampedro has retained for many years an AV rating from Martindale-Hubbell. Martindale-Hubbell is the most recognized lawyer rating service in the country. An AV rating recognizes a firm that has achieved the highest level of



professional skill and integrity.

The AV rating of Panter, Panter & Sampedro is based on peer reviews by members of the Florida Bar and the judiciary. In

other words, lawyers and judges whom we have worked closely with – both for and against – opine that we are among the best in our business not only for our legal skills, but also for the honesty, ethics and integrity that characterizes Panter, Panter & Sampedro, P.A.

## Stearman Crashes In The Smokey Mountains

On August 17, 2003 a young man climbed aboard a Boeing Stearman PT-17 operated by an experienced pilot who unfortunately collided with trees and crashed in the Smokey Mountains. The flight was conducted by visual flight rules (VFR) and visual meteorological conditions (VMC).

The pilot maneuvered the aircraft into a small three-sided valley with sharply rising terrain and realized the aircraft was unable to climb over the rapidly approaching terrain. The pilot died in the crash and the passenger was seriously injured. The passenger's family contacted Brett Panter who was known to them to be a lawyer and a pilot who often flies in the Smokey Mountains. Mr. Panter immediately learned that the flight was in violation of Federal Aviation Regulations, which require a minimum safe altitude of 500 feet. Because the aircraft was flying so low it impacted the trees and came to rest on a steeply sloping hillside.

Mr. Panter was intimately familiar with the violations of Federal Aviation Regulations, which resulted in this fatality and life altering injuries. FAR 91.119 states as follows:  
“(c) Over other than a congested

area. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated any closer than 500 feet to any person, vessel, or structure.”

Mr. Panter through witnesses and expert reconstruction was able to prove that this was a flight at treetop levels in a mountainous terrain. Although that provided a great thrill to the pilot and his passengers it was a blatant violation of the FARs and in this case contributed to the death of the pilot and the significant permanent injuries to the passenger who became the client of Panter, Panter & Sampedro.

Mr. Panter was able to prove that when the pilot elected to fly a route over rough terrain and geographically challenging terrain, he assumed a risk that could have been minimized by operating at a safe altitude. The pilot created a risk of disaster for himself and his passenger in this case. From studying this accident the conclusion by qualified experts was that if the pilot had complied with the applicable FARs, the accident would have been avoided.



An important lesson to be learned from this case is that no matter what the pilot's skill level is or the aircraft he or she is flying every pilot must follow the well-founded rules, which dictate the manner in which aircraft are flown.

Brett Panter has been a member of the Aircraft Owners Pilot Association since 1987 and has more than 1500 flight hours and is a commercial pilot with an airplane single and multi-engine instrument rating. This background and experience provided him with an ability to understand this aviation disaster and be able to recognize the issues promptly and secure a settlement for his client prior to even filing a lawsuit. The case was settled under a confidentiality agreement; therefore, the terms of the settlement cannot be released.



Christian Carrazana

## Christian Carrazana Joins P,P&S!

Panter, Panter & Sampedro, P.A. is proud to announce that Christian Carrazana has joined the firm as an Associate. Mr. Carrazana is the leader of a team zealously representing various healthcare providers

in first party claims.

Mr. Carrazana has been a member of the Florida Bar since 1999. He is an engaging trial lawyer who meticulously prepares for his representation of various clients. Mr. Carrazana served in the Air Force from 1991 through 1995 and is often called upon by his peers to evaluate legal issues and provide his opinion on many legal issues.

## Burn Victim Receives Over Two Million Dollars in Settlement

In 1992 Marta Espinosa came to the United States from Nicaragua with one goal in mind – she wanted a better life for her family and three children. With that in mind, she set out to do the best she could and work as hard as she could. Shortly thereafter, she was fortunate enough to meet her husband, Ramon, and the two have been inseparable ever since. They enjoyed spending time with their family, fishing, going to the beach and the outdoors.

In 1999, Marta was hired by, Van Teal, Inc., a company that manufactures lamps and accessories. She was very skilled and part of her tasks included applying heat to acrylics to give the lamps an aged or antique look.

Sadly, on November 20, 2002 while working with a blow torch that emitted heat from a combination of hydrogen and

oxygen gases, an explosion occurred. The flames engulfed Marta's clothes and body and she sustained burns to seventy-five percent (75%) of her body. She was immediately taken to Jackson Memorial Hospital Burn Unit where her family was told that she had sustained second and third degree burns to her face, neck, arms, torso, legs, and hands. Marta remained in intensive care for several months and required extensive surgery and painful skin grafts. Thereafter, she was placed on a painful regiment involving physical and occupational therapy.

Although Marta was able to obtain benefits through her worker's compensation carrier, those benefits were limited and did not provide the financial security that Marta and her family needed. When Marta contacted Panter, Panter & Sampedro, P.A.,

David Sampedro investigated and soon discovered that her employer did not own the building where Marta worked as she was lead to believe. In addition, Mr. Sampedro suspected that an inadequate amount of ventilation in Marta's work area allowed the gasses to accumulate and create the dangerous condition which resulted in the explosion.

With a team of experts from around the country, David Sampedro litigated this case and discovered many local, state, and federal fire codes which the owner of the building violated. Eventually, on January 5, 2005 a settlement was reached for Two Million Twenty-Five Thousand Dollars (\$2,025,000.00) The settlement will result in the financial stability and security for Marta and her family which she sought when she first came to this country.

## Mitchell Panter Elected President of the Pinecrest Business Association

Mitchell Panter was recently elected President of the Pinecrest Business Association for a 2 year term beginning January, 2005. Prior to being elected President, Mitchell served as Vice President for Government Relations for several years. The Pinecrest Business Association is a volunteer group of more than 160 businesses within and around the Village of Pinecrest. Formed by Brett Panter and Grant Miller of Miller Publishing, this group exists to: 1) promote business and business relationships among members; 2) represent business interests within the Village of Pinecrest in village politics, government activities and community affairs and; 3) provide community



service. The PBA has already raised more than \$70,000.00 for local schools through the Taste of Pinecrest event which takes place in February. Additionally, the PBA has met with local government officials to ensure that the interests of local businesses are

protected in areas such as zoning, sign usage and landscaping requirements. If you are interested in finding out more about the PBA, see our website at [www.pinecrestbusiness.com](http://www.pinecrestbusiness.com).

## Congratulations to David Sampedro!

For the second year in a row David Sampedro has been selected by his peers to appear in the Best of the Bar. Each year the South Florida Business Journal recognizes the leading attorneys in South Florida by publishing its Best of the Bar

list. This year more than two thousand individuals were nominated and we are proud to announce that David Sampedro was one of the very few personal injury attorneys in South Florida to be recognized by the legal publication.