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 disincentive to bring a case. The substantially increased legal fees required to bring a case will generally not be recovered because the contingency fee cap makes it prohibitively expensive to bring a case to trial.

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 265 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.

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.

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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, familiar with the violations of which resulted in his 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 speed 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 & Sam Pedro.

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 and 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.

Burn Victim Receives Over Two Million Dollars in Settlement

In 1992 Marta Espinoza 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 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 the task 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 both 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 regimen 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 & Sam Pedro, P.A., David Sam Pedro investigated and soon discovered that her employer did not own the building where Marta worked as she was lead to believe. In addition, Mr. Sam Pedro 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 Sam Pedro litigated this case and discovered many local, state, and federal regulations that the owner of the building violated. Eventually, on January 5, 2003 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.

Christian Carrazana Joins P&P&S!

Panter, Panter & Sam Pedro, 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.

Congratulations to David Sam Pedro!

For the second year in a row David Sam Pedro 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 Sam Pedro has been selected by his peers and personal injury attorneys in South Florida to be recognized by the legal publication.