

Nov. 13, 2007  
By Mike Colias

### **Judge strikes down Illinois med mal caps**

(Crain's) – A Cook County judge on Tuesday struck down a two-year-old Illinois law that caps some jury awards to victims of medical malpractice.

Circuit Court Judge Diane J. Larsen ruled that limiting payments for “non-economic damages” such as pain and suffering is unconstitutional. The law caps those awards in malpractice suits at \$500,000 per case for doctors and \$1 million per case for hospitals. There is no cap on economic damages, such as loss of pay.

In her 10-page opinion, Judge Larsen ruled that the law violates the Illinois Constitution’s “separation of powers” clause – essentially finding that lawmakers interfered with the right of juries to determine fair damages.

The ruling means the case likely will go directly to the Illinois Supreme Court as early as next summer. The court has twice before struck down laws that limit payments to malpractice victims: once in the 1970s and again in 1997.

The decision deals a blow to doctors and the hospital industry, which waged a bitter lobbying campaign in 2005 to get the law passed. Facing resistance from the state’s trial bar, they argued that frivolous malpractice lawsuits and runaway jury awards were causing sky-high insurance rates and driving some doctors out of the state.

In a statement Tuesday, the Illinois Hospital Assn. expressed disappointment in the ruling but said it looked forward to a Supreme Court decision.

“The law is critically needed to preserve and enhance access to health care for Illinoisans and remains the most appropriate, meaningful and comprehensive solution to address the medical liability crisis,” the statement reads.

Illinois’ trial bar sued last year to have the caps struck down as part of a malpractice lawsuit against Gottlieb Memorial Hospital in Melrose Park in which a baby allegedly suffered brain damage during a botched delivery. That case has not gone to trial.