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February 4, 2010

**ILLINOIS HOSPITAL ASSOCIATION
MEMORANDUM**

TO: Chief Executive Officers, Member Hospitals and Health Systems
Chief Financial Officers
In-House Counsel
Government Relations Personnel
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FROM: Thaddeus J. Nodzinski, Senior Associate General Counsel

SUBJECT: *Lebron v. Gottlieb Memorial Hospital*

Decision Summary

The Illinois Supreme Court this morning struck down the entire Illinois' medical liability reform law, including caps on non-economic damages, in *Lebron v. Gottlieb Memorial Hospital*, on a 4-2 vote. The four Democrat justices voted to strike down the law for violating the separation of powers clause of the Illinois Constitution. Republican Justices Karmeier and Garman dissented.

The ruling can be viewed on the Supreme Court's web site at:
<http://www.state.il.us/court/Opinions/SupremeCourt/2010/February/105741.pdf>.

Decision Consequences

The *Lebron* decision invalidates comprehensive medical liability reform enacted in 2005 (Public Act 94-677). That Act contained the following provisions:

- Caps on non-economic damages (\$500,000 for physicians; \$1 million for hospitals) – but NO limits on economic damages, such as future lost wages and all past, present and future medical costs;
- Structured awards to more efficiently provide for future medical care of injured plaintiffs and reduce medical liability costs (e.g., periodic payments such as annuities, rather than lump sum payments);
- Insurance regulations, including new data reporting to promote greater competition in the marketplace and to stabilize premiums;
- Strengthened physician disciplinary regulations;
- Expert witness standards;
- Apology protection.

As a result of *Lebron*, Illinois law in all of the reformed areas reverts back to the state of the law that existed before the passage of P.A. 94-677. All medical liability cases filed after the effective date of P.A. 94-677 (August 25, 2005) are no longer subject to the recovery limitations and other reforms.

Discussion of the *Lebron* Decision

Background of Lebron

Lebron was a medical liability lawsuit alleging hospital and physician negligence that caused certain permanent birth-related injuries. After reviewing briefs and hearing argument on the constitutionality of P.A. 94-677, the trial court held that it was bound to follow the Illinois Supreme Court's decision in *Best v. Taylor Machine Works* (1997) and held that the entire Act was unconstitutional because the limitations on non-economic damages violated the separation of powers clause of the Illinois Constitution.

That ruling was appealed immediately to the Illinois Supreme Court. The case was extensively analyzed and briefed by the parties and the Court accepted 16 friend-of-the-court briefs, including one from the Illinois Hospital Association.

Fourteen months after hearing arguments in the case, the Illinois Supreme Court rendered its 4-2 decision to invalidate the law on February 4, 2010.

The Illinois Supreme Court's Decision

The Supreme Court affirmed the ruling of the trial court and said that under this Act:

[T]he court is required to override the jury's deliberative process and reduce any noneconomic damages in excess of the statutory cap, irrespective of the particular facts and circumstances, and without the plaintiff's consent. [The cap] thus violates the separation of powers clause because it "unduly encroaches upon the fundamentally judicial prerogative of determining whether a jury's assessment of damages is within the meaning of the law." (Quoting the *Best* decision).

The court further said:

The damage limitation violates the constitutional principle of separation of powers by interfering with the authority of the judicial branch to reduce verdicts. What the statute allows for amounts to a "legislative remittitur."

In reaching this conclusion, the court adopted a broad interpretation of its decision in *Best* to include any effort by the General Assembly to limit the damages decisions of courts and juries. Any general legislation that attempts to do so without taking into account the particular facts and circumstances of each case, in this Court's view, violates the inherent judicial power of the courts. Accordingly, the *Lebron* decision creates an enormous obstacle to any future legislation imposing damage caps.

The fact that the Act was a reasonable multidimensional approach to a complex public health crisis affecting access to health care was irrelevant to this court's separation of

powers analysis. It broadly construed precedents such as *Best* to invalidate the Act and narrowly construed cases and statutes that supported the constitutionality of the law.

The Supreme Court also agreed with the circuit court that, because the challenged provision is not severable under the terms of the Act, the entire statute is invalid.

Justice Karameier, who was joined by Justice Garman, filed a vigorous dissenting opinion describing what he views as the flaws in the majority's opinion. The dissent challenges the majority's conclusion that caps constitute an unconstitutional legislative remittitur, arguing that the concept of legislative remittitur has no constitutional underpinning.

If you have any questions or comments regarding the *Lebron* decision, please call (630) 276-5472 or e-mail me at tnodzenski@ihastaff.org