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Limits on Non-Economic Damages are Racially Discriminatory

Among the “tort reform” measures that the insurance industry, big business and organized medicine most desire is an arbitrary ceiling, or cap, on the amount an injured person could receive for non-economic injuries.

These are injuries that cause one to lose their quality of life – thousands of everyday things typically taken for granted like waking up without pain, eating food without someone’s help, dressing a child or even having children at all.

- **Economic vs. Non-Economic Damages.** If an individual is injured, the calculation of their “economic” loss includes consideration of wages or lost salary. Therefore, those with low or no wages – such as children, senior citizens, and women who do not work outside the home - are more likely to receive a greater percentage of their compensation in the form of non-economic payments. Limits on non-economic damages are disproportionately unfair to minorities.¹
- **John Conyers (D-MI), Chairman of the U.S. House Judiciary Committee,** said in 2004, “The restrictions on non-economic damages ... will have a severe and disproportionate impact on minorities.”²
- **U.S. Senator Edward Kennedy (D-MA), Chairman of the U.S. Senate Labor Committee,** noted in a 2002 letter to President Bush, “Caps on non-economic damages discriminate against women, children, minorities, and low income workers. These groups do not receive large economic damages attributable to lost earning capacity. Thus, non-economic damages are particularly important to these vulnerable populations.”³

From: “The Racial Implications of Tort Reform” by Joanne Doroshow and Amy Widman, 25 WASH. U. J.L. & POL’Y 161 (2007), is part of a volume entitled, “ACCESS TO JUSTICE: THE SOCIAL RESPONSIBILITY OF LAWYER.” <http://law.wustl.edu/Journal/index.asp?ID=6718>. The full article is here: <http://law.wustl.edu/Journal/25/DoroshowWidman.pdf>

NOTES

¹ See, e.g., Amanda Edwards, “Medical Malpractice Non-Economic Damages Caps: Recent Developments, 43 Harv. J. on Legis. 219-221 (examining how such caps affect minority populations, and explaining how the data tables used to calculate economic damages project lower earnings for nonwhite workers, and this results in lower economic damages and more harm from non-economic damage caps.).

² Congressman John Conyers, Press Release, “Conyers says: ‘Tort Reform Movement Has a Massively Disproportionate Impact on Minorities’” March 11, 2004.

³ Letter from Senator Ted Kennedy to President Bush, July 2002.