

RESOLUTION 06-05-2013

DIGEST

Civil Code: Increase to MICRA cap

Amends Civil Code section 3333.2 to increase the MICRA cap from \$250,000 to \$500,000.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 03-03-2005, which was approved in principle.

Reasons:

This resolution amends Civil Code section 3333.2 to increase the MICRA cap from \$250,000 to ~~\$500,000~~ *\$1,000,000, indexed to inflation*. This resolution should be approved in principle because the present cap has been in place since the Medical Injury Compensation Reform Act was enacted in 1975 and its real value has been diminished accordingly.

The cap places a \$250,000 cap on a plaintiff's noneconomic damages. The value of \$250,000 today translates to roughly \$60,000 in 1975 dollars. The resulting economic inequality mandates an increase to an amount capable of meeting the needs of current victims. In order to bear any semblance of fairness, the MICRA cap on noneconomic damages should be relevant to the 2013 cost of living. This resolution would adjust the cap to a reasonable level. This limit should also be increased because members of the medical profession can now obtain higher policy limits than when the MICRA cap was first introduced.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 3333.2 to read as follows:

1 § 3333.2

2 (a) In any action for injury against a health care provider based on professional
3 negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate
4 for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary
5 damage.

6 (b) In no action shall the amount of damages for noneconomic losses exceed ~~two hundred~~
7 ~~fifty thousand dollars (\$250,000)~~ *five hundred thousand dollars (\$500,000) one million dollars*
8 *(\$1,000,000), or such other amount, if larger, based on indexing the \$1,000,000 maximum amount to*
9 *the Cost of Living Adjustment determined annually and used to adjust the amount of benefits paid by*
10 *the United States Social Security Administration.*

8 (c) For purposes of this section:

9 (1) "Health care provider" means any person licensed or certified pursuant to Division 2
10 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to
11 the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter
12 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any
13 clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with

14 Section 1200) of the Health and Safety Code. "Health care provider" includes the legal
15 representatives of a health care provider;

16 (2) "Professional negligence" means a negligent act or omission to act by a health care
17 provider in the rendering of professional services, which act or omission is the proximate cause
18 of a personal injury or wrongful death, provided that such services are within the scope of
19 services for which the provider is licensed and which are not within any restriction imposed by
20 the licensing agency or licensed hospital.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Existing law, as it has been since the enactment of Medical Injury Compensation Reform Act in 1975, places a \$250,000 cap on a plaintiff's noneconomic damages (i.e. pain and suffering). The value of \$250,000 today translates roughly to \$60,000 in 1975 dollars. Conversely, had the statute been indexed for inflation, the statutory amount would be over \$1 million.

There have been a multitude of studies regarding the impact of MICRA, and some support for the argument that the cap disproportionately affects plaintiffs with small economic damages, but great damage to their quality of life.

This Solution: This resolution would change the cap from \$250,000 to ~~\$500,000~~ \$1,000,000, indexed to inflation, to more fairly balance the interests of health care professionals with the need to ensure an adequate remedy for medical malpractice victims.

Many portions of the statutory scheme, including the existence of a damages cap, have survived constitutional challenges (such as equal protection and due process). (See *Stinnett v. Tam* (2011) 198 Cal.App.4th 1412.) Other states have found such cap to be unconstitutional.

The subject resolution focuses specifically on the amount of the statutory cap on damages (rather than the constitutionality). While it is clear that the legislature perceived that high malpractice insurance costs posed problems with respect to the availability of coverage, it is not clear that those problems still exist. Moreover, studies have also shown that the passage of MICRA did not alleviate the sharp increases in medical malpractice insurance premiums insomuch as Proposition 103, allowing state regulation, was passed in 1988.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Erin Noonan, Los Angeles Superior Court,
12720 Norwalk Boulevard Dept. C, Norwalk, CA 90650; (562) 807-7494;
enoonan@lasuperiorcourt.org.

RESPONSIBLE FLOOR DELEGATE: Erin Noonan