



## Newsletters

### Medical Litigation Newsletter - March 2010

March 23, 2010

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#### **Illinois Supreme Court Holds Non-Economic Damages Caps in Medical Malpractice Actions Invalid**

On February 4, 2010, the Illinois Supreme Court issued its long awaited decision in *Lebron vs. Gottlieb Memorial Hospital, et al.*, 2010 WL 375190, (Nos. 105741 and 105745), striking down the “significant reforms” adopted by the Illinois General Assembly in Pub. Act 94-677 (Act) (effective, August 25, 2005) in response to a perceived medical malpractice crisis. The Court held that the limitation on noneconomic damages in medical malpractice actions set forth in Section 2-1706.5 of the Illinois Code of Civil Procedure (Code) violates the separation of powers clause of the Illinois Constitution and is invalid. The Court further held that because the Act contains an inseverability provision, the Act is invalid and void in its entirety.

#### **The 2010 Estate Tax Earthquake**

Because Congress did not act in 2009 to preserve the federal estate tax and the generation-skipping transfer (GST) tax in 2010, the federal estate, gift and GST taxes, which are sometimes collectively referred to as “transfer taxes,” have changed greatly from what they were in 2009. As a result of the provisions of the 2001 Tax Act, the estate and GST taxes have been repealed for one year. The gift tax remains in place, with a \$1 million exemption and 35 percent maximum rate. A “modified carryover basis” regime has been implemented to generally deny a step-up in the basis of appreciated assets at death.

#### **Hinshaw Representative Matters**

Each issue of the Medical Litigation Newsletter will showcase a few cases that have recently been handled by Hinshaw lawyers. We are pleased to report the following:

Michael F. Henrick tried a case in Chicago in December 2009 with a defense verdict for ISMIE Mutual Insurance Company. The case involved a patient who had been operated on by a physician for colon cancer. He subsequently developed a leak at the anastomosis site. The physician handled post-op care until fired by the family. A second surgeon came in to do repair four weeks after the original surgery, but the patient died after that procedure. Plaintiff asked the jury for \$2.75 million. But the jury returned verdict for the defense in three and one-half hours.

#### Attorneys

Michael F. Henrick



Michael P. Russart successfully defended a chiropractor in a Chiropractic Board inquiry. It was claimed that the chiropractor was selling homeopathic remedies contrary to Wisconsin's chiropractic regulations. The Board agreed that because the chiropractor was dually licensed as a physical therapist, and physical therapists have no regulations preventing that profession from selling homeopathic products, he did not violate the Wisconsin Administrative Code.

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