SUPREME COURT OF LOUISIANA

No. 99-C-0232

DEBORAH BATSON, EULA MAYE BATSON AND BILLY BATSON

VERSUS

SOUTH LOUISIANA MEDICAL CENTER AND THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF LAFOURCHE

TRAYLOR, J., dissenting

I dissent from the majority's conclusion that LA. REV. STAT. ANN. 40:1299.39(F), which forms a part of the Malpractice Liability for State Services Act ("MLSSA"), allows multiple caps for damages where separate acts of medical negligence result in separate and distinct injuries to a single patient.

The majority quite properly acknowledges the import of subsection (D) of the statute: "Pursuant to [sub] Section D, plaintiffs may bring actions under the MLSSA, and they are entitled to the *same remedies* as provided under private law for damages caused by malpractice." *Batson v. South Louisiana Medical Center*, 99-C-0232, Slip Op., p. 10 (emphasis added). The relevant provisions of subsection (D) provide, *inter alia*:

> (1) Whenever in the same circumstances, but not more than to the same extent, that a patient would, under the private law, including the Louisiana Civil Code, which is applicable only to private persons among themselves alone, be allowed a recovery, due to malpractice, from a private person not employed by nor acting on behalf of a public entity, a patient, his representative properly acting for him, or his after-death representative shall have a right to recover, from the state, losses, including the death of said patient, but only to the degree and within the limits allowed by, and subject to the terms and conditions of, this Section of public law . . .

However, after recognizing that persons who are injured through the negligence of state healthcare providers are entitled to the same remedies found in the private act (MMA), the majority holds: "[t]he language of LSA-R.S. 40:1299.39(F) should be interpreted to indicate by inference that the total amount recoverable for each act of malpractice shall not exceed $500,000.00." *Id*.

A review of the cap language employed by the private act (LA. REV. STAT. ANN. 40:1299.42)

indicates an express limitation of liability of $500,000.00 for *all* medical malpractice claims for injury or death of a patient. In pertinent part, LA. REV. STAT. ANN. 40:1299.42 provides:

> B. (1) The total amount recoverable for all malpractice claims for injuries to or death of a patient, exclusive of future medical care and related benefits as provided in R.S. 40:1299.43, shall not exceed five hundred thousand dollars plus interest and cost.
>
> (2) A health care provider qualified under this Part is not liable for an amount in excess of one hundred thousand dollars plus interest thereon accruing after April 1, 1991, for all malpractice claims because of injuries to or death of any one patient.
>
> (3)(a) Any amount due from a judgment or settlement or from a final award in an arbitration proceeding which is in excess of the total liability of all liable health care providers, as provided in Paragraph (2) of this Subsection, shall be paid from the patient's compensation fund pursuant to the provisions of R.S. 40:1299.44(C).
>
> (b) The total amounts paid in accordance with Paragraphs (2) and (3) of this Subsection shall not exceed the limitation as provided in Paragraph (1) of this Subsection.

(emphasis added).

The cited language of the private act clearly limits the general damage recovery to $500,000.00 for all acts of medical negligence by a private healthcare provider to a single patient. Therefore, there is no remedy in law (damages) beyond the $500,000.00 cap available to injured patients under the private act.

Considering LA. REV. STAT. ANN. 40:1299.39 in its entirety, which is necessary for a proper construct of the statute, it is abundantly clear that subsection (D)(1) was intended to grant the same remedies to persons who bring claims under the MLSSA as those available to persons who are injured by private healthcare providers, including the $500,000.00 cap for general damages for *all acts* of medical negligence to a single patient. To conclude otherwise is to create an anomaly in the malpractice statutes and to repudiate this court's recent decision in *Conerly v. State*, 97-0871 (La. 7/8/98), 714 So. 2d 709, which concluded that, by enacting subsection (D), "it was the legislature's intent that a claimant suing under the MLSSA should not recover more than a claimant suing under the private act when the same circumstances are presented." *Id*., at 713.

Undeniably, the MLSSA and MMA were enacted to protect the public fisc, while at the same time ensuring that affordable medical care is available to the citizens of this state. The inauguration of a dual system of general damage caps for medical malpractice claims, depending solely on the fortuity of being treated by a state healthcare provider, renders absurd the laudable efforts by the legislature.