SUPREME COURT OF LOUISIANA

No. 99-C-0232

DEBORAH BATSON, EULA MAYE BATSON
AND BILLY M. BATSON

Versus

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

LEMMON, J., Concurring

On a preliminary point, the State mistakenly argues that since the malpractice which caused the sepsis was a cause-in-fact, from a "but for" viewpoint, of the decubitis ulcers and the flexion contractures, a single $500,000 limitation on recovery for all malpractice-caused injuries should apply. This is not the function of the cause-in-fact inquiry, which is simply one step of the duty-risk analysis for determining the liability of each tortfeasor.

When one tortfeasor causes injuries which are worsened by the second tortfeasor's negligent medical treatment of those injuries, the first tortfeasor is liable for all injuries. Weber v. Charity Hosp. of La. at New Orleans, 475 So. 2d 1047 (La. 1985). However, the second tortfeasor is only liable for the injuries directly caused by that tortfeasor. The injuries are separable, and a different question of liability is presented for each injury.

In the present case, the original tortfeasor well may be liable for all of plaintiff's injuries that followed in a "but for" fashion, but each subsequent tortfeasor is also liable for the injury he or she caused by separate acts of malpractice. The $500,000 statutory cap is not part of the liability determination in which cause-in-fact plays a role, but

rather comes into play in considering limitations on liability.

The key issue in this case is whether the $500,000 limitation applies when the malpractice victim seeks recovery in one action for two (or more) separate and distinct injuries resulting directly from two (or more) separate and unrelated acts of malpractice. La. Rev. Stat. 40:1299.42,[1] while limiting the tort victim's recovery for "all malpractice claims" to $500,000, does not address whether the limitation applies to two separate and unrelated acts of malpractice, by different tortfeasors, resulting in two separate and distinct injuries, that could give rise to two separate actions (even though the acts were during the same hospitalization).[2] A court's deciding the resolution of this unprovided-for situation is in the very nature of the judicial process.

The $500,000 limitation is special legislation in derogation of the rights of tort victims and must be strictly construed against the limitation of damages that otherwise are recoverable. Sewell v. Doctors Hosp., 600 So. 2d 577 (La. 1992). In the present case, there were three separate and unrelated acts of malpractice committed by three different tortfeasors in three different disciplines, that resulted in three separate and distinct injuries.[3] The limitation, when strictly construed, simply does not apply.

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[1]La. Rev. Stat. 40:1299.42 is part of the private act, but is applicable to the decision in this case because a malpractice victim cannot recover more under the public act than a victim suing under the private act in similar circumstances. Conerly v. State, 97-0871 (La. 7/8/98), 714 So. 2d 709. However, the holding in Conerly (that only one limitation applies for both survival and wrongful death damages under the private act) certainly does not control the decision in this case.

[2]The limitation applies to limit the malpractice victim's recovery when there is one tortfeasor and one injury, or when there are two or more tortfeasors but only one injury, as in Turner v. Massiah, 94-2548 (La. 6/16/95), 656 So. 2d 636.

[3]If the tort victim had filed three separate suits under three docket numbers, the cases arguably would not have been consolidated.