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JURIES V. COST SAVINGS – AN UNACCEPTABLE TRADE-OFF

It would be wrong to eliminate the right to civil jury trial in order to save costs. As the late Chief Justice William Rehnquist wrote:

- “The right of trial by jury in civil cases at common law is fundamental to our history and jurisprudence.... A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded.” *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322 (1979) (Rehnquist dissenting).
- “The guarantees of the Seventh Amendment will prove burdensome in some instances; the civil jury surely was a burden to the English governors who, in its stead, substituted the vice-admiralty court. But, as with other provisions of the Bill of Rights, the onerous nature of the protection is no license for contracting the rights secured by the Amendment.” *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322 (1979) (Rehnquist dissenting).

The civil jury’s roots in America are extremely deep.

- The American colonists fought the Revolutionary War in significant part over England’s repeated attempts to restrict jury trials and the U.S. Constitution was nearly defeated over its failure to guarantee the right to civil jury trial. (The Seventh Amendment eventually resolved the problem.) See, e.g., Charles W. Wolfram, “The Constitutional History of the Seventh Amendment,” 57 *Minn. L. Rev.* 639 (1973).
- The right to jury trial has been secured not only by the U.S. Constitution, but by every state as well.

The right of patients to have their disputes resolved by juries and judges is both fundamental to our system of government and the proper way to resolve disputes.

- The determination of fault under common law is the quintessential jury function. *Arizona Copper Co. v. Hammer et al*, 250 U.S. 400, 432 (1918).
- Consistent empirical studies show juries to be competent, effective, and fair decision makers able to handle complex cases. Testimony of Neil Vidmar, Russell M. Robinson, II Professor of Law, Duke Law School before The Senate Committee on Health, Education, Labor and Pensions, “Hearing on Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006.

- Other studies show that because of the group processes of collaboration and deliberation, juries are well-suited for complex cases. Philip G. Peters, Jr. “The Role of the Jury in Modern Malpractice Law,” 87 *Iowa L. Rev.* 909, 927-28 (2002).

Many medical malpractice patients rely on the civil jury system for reasons other than monetary compensation; it is sometimes the only means available for patients to obtain personal justice.

- On February 11, 2003, dozens of medical malpractice victims came to Capitol Hill for a Forum on Malpractice, Chaired by Congressman John Conyers (D-MI), and testified about how important it is for victims to have the right to tell their stories to impartial juries:

Ariba Morris of Florida, whose young child is a quadruple amputee due to malpractice after birth: “Taking away the right of a jury to decide what is fair on a case-by-case basis ... will not solve the medical malpractice insurance crisis. It will only cause more suffering to victims who have already suffered enough through no fault of their own.”

The late Richard Flagg of New Jersey, whose surgeon removed the wrong lung leading to his eventual death: “[I]t seems to me that back in 1789 when the Constitution of the United States was written our forefathers had in mind one thing. Justice in this country was to be decided by a jury of our peers. This is not true today. It is in criminal cases. It is in murders. It is in robberies. It isn’t in medical malpractice.”

Linda McDougal of Wisconsin who received an unnecessary double mastectomy after being mistakenly told she had cancer: “Victims deserve to have their cases decided by a jury that listens to the facts of their individual case and makes a determination of what is fair compensation based on the facts of that case. And now proposals are being discussed that would further hurt people like me, all for the sake of helping the insurance industry.”

Margie Tororiello of New York City, whose Park Ave OB-GYN subjected her to horrible malpractice, said: “Let the jury decide. Isn't that what our nation is about? Let the jury decide. When the jury walks into that box, they listen to the facts. It works; our system works. Let it work now. Let us have our day in court. Let these people tell their stories to their peers.”