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California's Statutory Limit on Recovery of Noneconomic Damages in Medical Malpractice Actions Does Not Violate Equal Protection. Fein v. Permanente Group, 695 P.2d 665 (Cal.)

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CALIFORNIA'S STATUTORY LIMIT ON RECOVERY OF NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE ACTIONS DOES NOT VIOLATE EQUAL PROTECTION

Fein v. Permanente Group, 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368, *dismissed for want of a substantial federal question,* 106 S. Ct. 214 (1985).

In *Fein v. Permanente Group*,[1] a sharply divided California Supreme Court employed a deferential standard of review in rejecting an equal protection challenge to a statutory ceiling on the amount recoverable for noneconomic damages in medical malpractice actions.[2]

The plaintiff, Lawrence Fein, went to the hospital after experiencing intermittent chest pains.[3] A physician suggested that muscle spasms had caused the pain and sent Fein home.[4] The next day, however, Fein suf-

1. 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368, *dismissed for want of a substantial federal question,* 106 S. Ct. 214 (1985).

The Supreme Court's dismissal of the appeal from the California decision, "for want of a substantial federal question," has had an uncertain effect upon state court decisions striking down damage limitations on equal protection grounds.

Congress has provided for Supreme Court review of state supreme court decisions. *See* 28 U.S.C. § 1257 (1982). The statute permits review by either appeal or certiorari.

When a state statute is challenged on federal constitutional grounds, the outcome of the decision determines the appropriate mode of review. If the state court upholds the validity of the statute, appeal may be had as of right. On the other hand, if the court finds the statute unconstitutional, review is available only by certiorari.

The right to direct appeal, however, does not automatically include the right to oral argument and briefs on the merits. The court is only obligated to review the preliminary jurisdictional papers, which require a demonstration that the issues raised on appeal are "substantial" from the standpoint of federal constitutional protections. The court may find the issues unsubstantial and summarily dismiss the action "for want of a substantial federal question." L.C. WRIGHT, A. MILLER, E. COOPER & R. GRESSMAN, FEDERAL PRACTICE & PROCEDURE § 4014 (1977).

Even though such a dismissal is ostensibly based on jurisdictional grounds, the Supreme Court has held that such a dismissal is an adjudication on the merits. *See* Hicks v. Miranda, 422 U.S. 332 (1974). The Court qualified its precedential effect, however, explaining that such action is only binding if the issues presented in a subsequent case are "sufficiently the same" as those in the dismissed case. *Id.* at 345 n.14.

For a discussion of the binding effect of the dismissal see generally, Note, *Summary Disposition of Supreme Court Appeals: The Significance of Limited Discretion and a Theory of Limited Precedent,* 52 B.U.L. REV. 373 (1972); Comment, *The Precedential Weight of a Dismissal by the Supreme Court for Want of a Substantial Federal Question: Some Implications of* Hicks v. Miranda, 76 COLUM. L. REV. 508 (1976).

2. *Id.* at 163, 695 P.2d at 684, 211 Cal. Rptr. at 386.

3. *Id.* at 144-45, 695 P.2d at 669, 211 Cal. Rptr. at 372.

4. *Id.*

fered a heart attack.[5] Fein sued Permanente Medical Group, a partnership of physicians, alleging negligent failure to diagnose and treat an impending heart attack.[6]

A jury awarded Fein actual damages[7] and 500,000 dollars for noneconomic damages.[8] Permanente moved to modify the award in accordance with the Medical Injury Compensation Recovery Act (MICRA),[9] which places a 250,000 dollar ceiling on the amount recoverable for noneconomic damages in medical malpractice actions.[10] Pursuant to the motion, the trial court reduced the noneconomic damage award to 250,000 dollars.[11] On appeal,[12] the California Supreme Court affirmed and *held*: the statutory limitation on the amount recoverable for noneconomic damages in medical malpractice actions did not violate the equal protection clause.[13]

The California Legislature enacted MICRA in 1975 in response to a well-publicized "crisis"[14] in California's[15] medical malpractice insurance

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5. *Id.*

6. *Id.* at 144, 695 P.2d at 670, 211 Cal. Rptr. at 373.

7. The jury awarded $724,733 for lost wages and $63,000 for future medical expenses. *Id.*

8. *Id.* The noneconomic damage award compensated for pain, suffering, inconvenience, physical impairment, and other intangible damage sustained by plaintiff. *Id.*

9. CAL. CIV. CODE § 3333.2 (Deering 1982). Section 3333.2 provides in pertinent part:

(a) In any [medical malpractice] action . . . the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other non-pecuniary damage.

(b) In no action shall the amount of damages for noneconomic losses exceed two-hundred fifty-thousand dollars ($250,000).

10. 38 Cal. 3d at 146, 695 P.2d at 671, 211 Cal. Rptr. at 374.

11. *Id.*

12. *Id.* The defendant argued that the trial court erred by (1) excusing certain members from the jury, (2) instructing the jury on the duty of care of a nurse practitioner, (3) instructing the jury on causation, (4) permitting the plaintiff to recover wages lost because of his diminished life expectancy, and (5) refusing to order periodic payment of all future damages.

Fein contended that the limitation on recovery of noneconomic damages was unconstitutional on due process and equal protection grounds. *Id.*

13. *Id.* at 163, 695 P.2d at 684, 211 Cal. Rptr. at 386.

14. *See Malpractice Crisis: How It's Hurting Medical Care,* U.S. NEWS & WORLD REP., May 26, 1975, at 32 (reviewing a strike by San Francisco anesthesiologists); *see also When Doctors Rebel Against Higher Insurance Costs,* U.S. NEWS & WORLD REP., Jan. 19, 1976, at 36 (discussing a work slowdown by L.A. County doctors and proposed insurance rate hike of 486%).

Not everyone, however, agreed that a crisis existed. *See* U.S. DEPT. OF HEALTH, EDUCATION & WELFARE, THE REPORT OF THE SECRETARY'S COMMISSION ON MEDICAL MALPRACTICE 109 (1973) [hereinafter cited as HEW REPORT] (medical malpractice was perceived as a "crisis" only by the medical profession); *see also* Jones v. State Bd. of Medicine, 97 Idaho 859 (1976); *see also* Jones v. State Bd. of Medicine, 97 Idaho 859 (1976) ("It is argued that the Act is a necessary legislative

industry.[16] In an effort to stabilize rising medical malpractice insurance premiums, the legislature imposed a 250,000 dollar limit on the amount recoverable for noneconomic damages.[17]

Because MICRA limits recovery in medical malpractice cases but not in other personal injury cases, MICRA arguably violates the equal protection clause. Article I of the California Constitution[18] and the fourteenth amendment of the United States Constitution[19] guarantee persons equal protection of the laws. The equal protection clause does not require absolute equal treatment in legislation. Rather, equal protection requires that similarly situated individuals be treated alike.[20] Whether a legislative classification may treat differently those who are similarly situ-

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response to a 'crisis' in medical malpractice insurance in Idaho, but the record does not demonstrate any such 'crisis.' ").

15. The medical malpractice insurance crisis was not peculiar to California. Rather, it was a national concern. By 1977, virtually every state had enacted or considered legislation aimed at resolving the insurance crisis. T. LOMBARDI, JR., MEDICAL MALPRACTICE INSURANCE 118-19 (1978).

16. Commentators have suggested many different causes of the crisis. Some commentators, for example, assert that an increase in the number of medical malpractice claims precipitated the crisis. *See, e.g.*, Gray, *The Insurer's Dilemma*, 51 IND. L.J. 120, 120-21 (1974). Other commentators claim the increase in the dollar amount of judgments rendered made insurance rates impossible to predict. *See Introduction: The Indiana Act in Context, 1975 Indiana Medical Act*, 51 IND. L.J. 91, 94 (1975) ("the unpredictability of jury awards are said to render intelligent ratemaking impossible").

17. *See supra* note 9. In addition to limiting recovery for noneconomic damages, the legislation also (1) limits the amount of contingency fees an attorney can contract for or collect in a professional suit, *see* CAL. BUS. & PROF. CODE § 6146 (Deering 1982); (2) repeals the "collateral source rule" making admissible evidence of collateral compensation, *see* CAL. CIV. CODE § 3333.1 (Deering 1982); (3) reduces the statute of limitations to three years following the date of injury or one year after the plaintiff discovers or should have discovered the injury, whichever occurs first, *see* CAL. CIV. PROC. CODE § 340.5 (Deering 1982); (4) imposes certain notice requirements, *See* CAL. CIV. PROC. CODE § 364(a) (Deering 1982); and (5) provides for periodic payment of future damages, *see* CAL. CIV. PROC. CODE § 667.7 (Deering 1982).

18. CAL. CONST. art. I, § 7(a): "A person may not be deprived of life, liberty, or property . . . or [be] denied equal protection of the laws." The California Supreme Court has construed the equal protection clause of the California Constitution as "substantially the equivalent" of the equal protection clause of the Federal Constitution. *See* Department of Mental Hygiene v. Kirchner, 62 Cal. 2d 586, 400 P.2d 321, 43 Cal. Rptr. 329 (1962).

19. U.S. CONST. amend. XIV, § 1, cl. 2: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

20. Whitaker v. Superior Court, 68 Cal. 2d 357, 365-68, 438 P.2d 358, 364-65, 66 Cal. Rptr. 710, 717-18 (1968) (so long as a classification "does not permit one to exercise the privilege while refusing it to another of like qualifications, under like conditions, and circumstances, it is unobjectionable upon [equal protection] grounds"). "The equal protection clause requires that persons under like circumstances be given equal protection and security in the enjoyment of personal and civil rights, the acquisition and enjoyment of property, the enforcement of contracts and the prevention and redress of wrongs; and that they be subject to similar taxes and penalties." 5 B. WITKIN,

ated usually depends upon the standard of review exercised by the court.[21]

Courts in six states have considered equal protection challenges to statutes limiting recovery in medical malpractice cases. The courts, however, have not applied a uniform standard of review.[22] In *Carson v. Maurer*,[23] the New Hampshire Supreme Court employed a "means focused" equal protection inquiry[24] to invalidate a statute imposing a 250,000 dollar limitation on the amount recoverable for noneconomic damages.[25] The court concluded that the necessary relationship between the legislative purpose and the means chosen to attain that purpose was weak.[26] Although courts in Illinois,[27] North Dakota,[28] Ohio,[29] and Texas[30] have invalidated on equal protection grounds damage award limitations, they have not clearly articulated the standard of review employed.

SUMMARY OF CALIFORNIA LAW, CONSTITUTIONAL LAW § 336 (1980). *See generally* J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 585-90 (2d ed. 1983).

Traditional equal protection analysis has generally employed two standards of review. The more stringent standard, strict scrutiny, requires that the legislation be necessary to the promotion of a compelling state interest. Generally, this test is utilized only when legislative classifications impinge on certain suspect classes or fundamental interests. Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection,* 86 HARV. L. REV. 1 (1972). The second standard, mere rationality, requires only that distinctions drawn by a challenged statute bear some rational relationship to some conceivable legitimate state purpose. *See* McGowan v. Maryland, 366 U.S. 420 (1961).

Despite the two traditional standards of review, courts have also applied a variety of intermediate levels of scrutiny. *See* GUNTHER, CONSTITUTIONAL LAW 591 (11th ed. 1985).

21. The higher the standard of review exercised by the court, the greater the likelihood that the legislative classification will violate the equal protection clause.

22. Courts have traditionally applied a deferential standard of review when considering equal protection challenges to economic and social welfare legislation. *See* New Orleans v. Dukes, 427 U.S. 297, 303 (1976).

23. 120 N.H. 925, 424 A.2d 825 (1980).

24. The court examined the strength of the relationship between the legislative goal and the means chosen to attain that goal. *Id.* at 927, 424 A.2d at 828.

25. *Id.* at 926, 424 A.2d at 826.

26. The court found this relationship weak for two reasons: (1) damage awards only account for a small portion of premium costs and (2) a few individuals actually suffer noneconomic damages in excess of $250,000. *Id.* at 929, 424 A.2d at 830.

27. Wright v. Du Page Hosp. Ass'n, 63 Ill. 2d 313, 347 N.E.2d 736 (1976) ($500,000 limitation on damages for personal injuries held unconstitutional).

28. Arneson v. Olson, 270 N.W.2d 125 (N.D. 1978) (statute allowing insurance companies to limit total liability in a policy year to $300,000 held unconstitutional).

29. Simon v. St. Elizabeth Medical Center, 355 N.E.2d 903 (Ohio Ct. Comm. Pleas 1976) ($200,000 limitation on general damages held unconstitutional).

30. Baptist Hosp. of Southeast Tex., Inc. v. Baber, 672 S.W.2d 296 (Tex. App. 1984) ($500,000 limitation on hospital liability held unconstitutional).

The Indiana Supreme Court, in *Johnson v. St. Vincent Hospital, Inc.*,[31] applied yet another standard, rejecting an equal protection challenge to a 500,000 dollar limitation on damages recoverable in medical malpractice actions.[32] The court determined that the legislative classification must not be "arbitrary or unreasonable" and that "a fair and substantial relationship [must] exist between the classification and the purpose of the legislation."[33] The court concluded that the limitation on recovery could rationally be considered by the legislature to be an "essential part" of a plan to "spread the risk of loss" suffered by health care providers.[34]

On three occasions, the California Supreme Court has rejected equal protection challenges to three separate MICRA provisions. In each case, the court employed the rational relation test to determine whether the challenged provision violated the equal protection clause. In *American Bank & Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.*,[35] the court held that MICRA's provision for periodic payment of future damages[36] did not violate the equal protection clause.[37] After noting the problems created by large lump sum damage awards, the court concluded that periodic payment of future damages was rationally related to the goal of reducing costs to medical malpractice defendants.[38]

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31. 273 Ind. 374, 404 N.E.2d 585 (1980).

32. *Id.* at 377, 404 N.E.2d at 587.

33. *Id.* The court explained that when neither a fundamental right nor a suspect classification is involved, courts defer to legislative judgment. *Id.* at 390, 404 N.E.2d at 601.

34. *Id.*

35. 37 Cal. 3d 146, 683 P.2d 670, 211 Cal. Rptr. 373 (1984).

36. This provision provides in pertinent part:

> In any action for injury or damages against a provider of health care services, a superior court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump sum payment if the award equals or exceeds fifty thousand dollars ($50,000) in future damages.

CAL. CIV. PROC. CODE § 667.7 (Deering 1982).

Several commentators have advocated the legislative adoption of a "periodic payment" procedure as a reform measure that would benefit both plaintiffs and defendants. *See* Henderson, *Periodic Payments of Bodily Injury Awards,* 66 A.B.A. J. 734 (1980). *See generally* Elliget, *The Periodic Payment of Judgments,* 46 INS. COUNS. J. 130 (1979).

37 37 Cal. 3d at 162, 683 P.2d at 682, 211 Cal. Rptr. at 385. The state supreme courts in New Hampshire and Wisconsin have addressed the constitutionality of similar periodic payment provisions. *See* Carson v. Maurer, 120 N.H. 925, 424 A.2d 825 (1980); State *ex rel.* Strykowski v. Wilkie, 81 Wis. 2d 491, 261 N.W.2d 434 (1978). Both courts utilized the rational basis test and held that the statutes did not violate the equal protection clause.

38. 37 Cal. 3d at 155, 683 P.2d at 678, 211 Cal. Rptr. at 380. The court found that large lump sum awards required insurance companies to retain large reserves to pay judgments. The adoption

In *Barme v. Wood*,[39] the court explicitly relied on the deferential standard of review applied in *American Bank*.[40] The court held that the MICRA provision[41] that precluded a "collateral source" from recouping medical expenses and benefits from a medical malpractice defendant did not violate the equal protection clause.[42] Finally, in *Roa v. Lodi Medical Group, Inc.*,[43] the court reviewed an equal protection challenge to a statutory limit on attorneys' contingency fees[44] in medical malpractice actions.[45] The court again applied the rational relation test, holding that the legislation was rationally related[46] to the legislative purpose.[47]

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of a periodic payment procedure would permit insurers to retain fewer liquid reserves and thereby to increase the capital available for investments. *Id.*

39. 37 Cal. 3d 174, 689 P.2d 446, 207 Cal. Rptr. 816 (1984). The plaintiff, a police officer, suffered a heart attack while on duty. During heart surgery, he sustained brain damage. He subsequently sued his physicians, alleging that his brain damage was due to their negligence. The City of Huntington, a self-insured workers' compensation carrier, intervened. The city sought to recover expenses it had incurred in providing workers' compensation benefits to the plaintiff. *Id.* at 176, 689 P.2d at 447, 207 Cal. Rptr. at 819.

The city argued that the elimination of the collateral source rule in medical malpractice actions denies equal protection by: (1) granting benefits to medical malpractice victims that are not granted to other tort victims, and (2) imposing a burden on employers who provide benefits to victims of medical malpractice that is not imposed on other employers. *Id.* at 182, 689 P.2d at 451, 207 Cal. Rptr. at 826.

40. *Id.* at 183, 689 P.2d at 451, 207 Cal. Rptr. at 825.

41. CAL. CIV. CODE § 3333.1(b) (Deering 1982).

42. The court stated that the statutory changes at issue were constitutionally limited to medical malpractice actions because that was the area in which the crisis arose. The legislature could have reasonably believed that the statute would help reduce the expenses of medical malpractice insurers by shifting costs to other insurers. 37 Cal. 3d at 183, 689 P.2d at 451, 207 Cal. Rptr. at 825.

43. 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985).

44. CAL. BUS. & PROF. CODE § 6146 (Deering 1982). In brief, the statute limits the amount of contingency fees that an attorney can contract for or collect in a professional negligence suit. Specifically, the statute limits contingency fees to: (1) 40% of the first $50,000 recovered, (2) 33 1/3% of the next $50,000 recovered, (3) 25% of the next $50,000 recovered, and (4) 10% of any amount by which the recovery exceeds $200,000. *Id.*

45. The plaintiffs argued that the provision violated the equal protection clause by imposing limits on the fees that plaintiffs' attorneys could charge, without imposing comparable limits on the fees that defense counsel could charge. 37 Cal. 3d at 926, 695 P.2d at 170-71, 211 Cal. Rptr. at 84.

46. The court found three constitutionally sufficient rationales. First, the legislature could have reasonably determined that the provision would promote lower settlements. Second, due to the disproportionate number of defense verdicts in the medical malpractice field, the provision would discourage frivilous suits and thereby reduce litigation costs for medical malpractice defendants. Finally, because the statute limited a victim's damage recovery, the legislature could have reasonably concluded that a limitation on contingency fees would be an "appropriate means of protecting the already diminished compensation" of medical malpractice plaintiffs. *Id.*

47. According to the court, the legislature had determined that the high cost of medical malpractice insurance premiums threatened to curtail the availability of medical care in the state and created a situation in which patients, injured by medical malpractice, might not have sufficient liabil-

In *Fein v. Permanente Medical Group,*[48] the California Supreme Court applied the same deferential standard of review to an equal protection challenge to a statutory limitation on noneconomic damages recoverable in medical malpractice actions. The majority relied heavily on the court's previous decision in *American Bank*, finding that the classifications created by the limitation on recoverable damages were rationally related to the legislative purpose.[49]

The court rejected the assertion that the 250,000 dollar limit unconstitutionally distinguished plaintiffs with less than 250,000 dollars in noneconomic damages from plaintiffs with more than 250,000 dollars in noneconomic damages.[50] Judge Kaus, writing for the court, listed three legislative rationales to support the constitutionality of the statute.[51] First, the 250,000 dollar limit would provide a more stable basis to calculate insurance rates.[52] Second, the statutory ceiling would help promote settlements, thereby reducing litigation costs.[53] Finally, an across-the-board limitation would be fairer than total elimination of recovery for noneconomic damages.[54]

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ity insurance to cover damages sustained. The legislature enacted MICRA to meet these problems, providing a series of measures aimed at reducing costs to medical malpractice insurers. *Id.*

48. 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368, *dismissed for want of a substantial federal question.* 106 S. Ct. 214 (1985).

49. *Id.* at 163, 695 P.2d at 683-84, 211 Cal. Rptr. at 386.

50. *Id.* Fein argued that the limitation on damages violates the equal protection clause because (1) it impermissibly discriminated between medical malpractice victims and other tort victims, (2) it improperly discriminated between medical malpractice plaintiffs with economic damages and those with noneconomic damages, and (3) it impermissibly denied "complete" recovery of damages only to those malpractice plaintiffs with noneconomic damages exceeding $250,000. *Id.*

The court quickly disposed of the argument that the statute unconstitutionally discriminated against medical malpractice victims. The court reiterated its conclusions in *American Bank, Barnes,* and *Roa.* stating that the legislature could constitutionally limit the statute to medical malpractice because that is the area in which the crisis arose. *Id.*

The court also quickly disposed of the argument that the statute violated the equal protection clause by denying complete recovery only to malpractice victims with noneconomic damages. The court concluded that the equal protection clause does not require the legislature to "limit a victim's recovery for out-of-pocket medical expenses or lost earnings" simply because the legislature also limited "damages for pain and suffering and similar noneconomic losses." *Id.*

51. *Id.*

52. *Id.*

53. *Id.* The court noted the inherent unpredictability of noneconomic damage awards. The unpredictability, according to the court, stemmed from the difficulty in valuing pain and suffering and the large disparity in jury awards. *Id.*

54. *Id.* The court asserted that the legislature could have believed that the fixed $250,000 limit would promote settlements by "eliminating the possibility of phenomenal awards for pain and suffering that can make litigation worth the gamble." *Id.*

In a strident dissent, Chief Justice Bird[55] criticized the majority's decision, arguing that the limitation could not survive "any serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals."[56] Although the Chief Justice acknowledged the legitimacy of the legislative purpose, she rejected each of the possible legislative rationales posited by the majority.[57] In addition, Chief Justice Bird argued that the statute created a class of persons, plaintiffs suffering noneconomic damages greater than 250,000 dollars, that was underinclusive.[58]

The dissent's analysis is flawed for three reasons. First, the Chief Justice failed to refute the legislative rationales posited by the majority. She asserted that the rationales were invalid because they would apply to any limitation on damages. Equal protection doctrine, however, does not require the legislature to have a unique justification for every classification that it creates. The equal protection clause only requires that a given classification have a rational relationship with the legislative goals.[59]

Second, Chief Justice Bird's finding that the classification was underinclusive did not mean that such a classification was unconstitutional. Even if a classification is underinclusive, it may still be constitutional if it is rationally related to a legislative purpose.[60]

Finally, the dissent's position reflects a misunderstanding of the role of the judiciary when economic or social welfare legislation is challenged on

55. *Id.* The court also asserted that the legislature could have believed it to be fairer to plaintiffs to reduce only the very large noneconomic damage awards, rather than to diminish modest recoveries for pain and suffering. *Id.*

56. Justice Wood concurred with Chief Justice Bird's dissent. Justice Mosk wrote a separate dissent.

57. Chief Justice Bird characterized the court's decision as "depriving" victims of medical negligence of compensation for proven noneconomic damages greater than $250,000. She also characterized MICRA as "arbitrarily singling out a few injured patients to be stripped of important and well-established protections against negligently inflicted harm." *Id.* at 167, 695 P.2d at 687, 211 Cal. Rptr. at 391.

58. *Id.* at 170, 695 P.2d at 691, 211 Cal. Rptr. at 393. The Chief Justice declared the first two rationales invalid because they would apply to any restriction on recovery. To the Chief Justice, judicial acceptance of such broad rationales would render judicial scrutiny meaningless. The Chief Justice also rejected the majority's "fairness rationale," stating "[t]he notion that the Legislature might have concentrated the burden on the most severely injured victims out of considerations of fairness certainly has the advantage of originality." *Id.*

59. According to the dissent, the classification created by the statute was underinclusive. The dissent implied that the legislative purpose could be better achieved by calling on a sacrifice from a larger class of plaintiffs. *Id.*

60. *See supra* notes 18-21 and accompanying text.

equal protection grounds. The essence of Chief Justice Bird's opinion was that the statute was unfair. The Chief Justice's attempt to find the statute unconstitutional was little more than an attempt to substitute judicial wisdom for that of the legislature.

In *Fein v. Permanente Medical Group*, the California Supreme Court reached a logical and well-supported result. The court remained consistent with its recent decisions upholding the constitutionality of other MICRA provisions. Most importantly, the majority properly limited judicial review of economic legislation, requiring statutory classifications to bear a rational relationship to the legislative purpose.[61]

A.J.W.

61. *See supra notes* 18-20 and accompanying text.