COMMENTS

CONSTITUTIONALITY OF LIMITATIONS ON ATTORNEYS' FEES IN MEDICAL MALPRACTICE ACTIONS

Roa v. Lodi Medical Group, Inc., 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985)

In *Roa v. Lodi Medical Group, Inc.*,[1] the California Supreme Court rejected due process,[2] equal protection,[3] and separation of powers[4] challenges to a statutory limitation[5] on contingency fees charged by a plain-

1. 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985).

2. The fourteenth amendment to the United States Constitution provides in pertinent part: "No state shall . . . deprive any person of life, liberty, or property, without due process of the laws." U.S. CONST. amend. XIV, § 1.

In *Roa*, the plaintiffs raised a substantive due process challenge rather than a procedural due process challenge. Substantive due process guarantees the fairness of the law or rule, whereas procedural due process guarantees the fairness of the decision-making process. Under substantive due process, the court reviews the substance of a law and determines if the law is compatible with the Constitution.

If a law *affects* fundamental individual rights, such as the rights to vote, privacy, marriage, and interstate travel, courts apply a strict scrutiny standard of review. Under strict scrutiny, the law must be necessary to promote a compelling or overriding governmental interest. If the law does not infringe upon fundamental rights, courts apply a rational basis test upholding the law if the law is rationally related to a legitimate governmental end. Courts do not consider the wisdom of the law. Courts normally apply this lower standard of review to economic or social welfare legislation. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 416-19 (2d ed. 1983).

3. The fourteenth amendment also provides that: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

The Constitution requires that the government treat similarly situated individuals in a similar manner. The equal protection clause guarantees that legislative classifications will not be used arbitrarily to burden a certain group of individuals. The legislative classification must relate to a legitimate governmental purpose. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 2, at 586-94.

4. No specific constitutional provision exists for the concept of separation of powers, but the United States Constitution divides the federal power among the legislative, executive, and judicial branches. The separation of powers doctrine stands for the concept that one branch is not permitted to encroach on the domain of another branch. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 2, at 135.

5. The statutory provision limiting the plaintiff's attorneys' fees provides in pertinent part:

> (a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:
>
> (1) Forty percent of the first fifty thousand dollars ($50,000) recovered.
>
> (2) Thirty-three and one-third percent of the next fifty thousand dollars ($50,000) recovered.

tiff's attorney[6] in a medical malpractice action.

Plaintiffs, parents of a minor child, instituted a medical malpractice action against health care providers[7] to recover damages for injuries their child sustained during birth.[8] The plaintiffs settled with two of the defendants for 500,000 dollars.[9] Plaintiffs and their attorneys had agreed to a contingency fee arrangement under which the attorneys were to receive twenty-five percent of the net recovery.[10] Because the contingency fee exceeded the maximum fee collectible under the statutory contingency fee scale,[11] the trial court refused to award the fee under the contract,[12] awarding a fee in compliance with the statutory limitation.[13] On appeal, the California Supreme Court affirmed and *held*: the statutory limitation on contingent attorneys' fees did not violate due process, equal protection, or the separation of powers doctrine.[14]

Legislative regulation of attorneys' fees is common. Congress, for example, has passed several statutes limiting attorneys' fees.[15] In addition,

---

(3) Twenty-five percent of the next one hundred thousand dollars ($100,000) recovered.

(4) Ten percent of any amount on which the recovery exceeds two hundred thousand dollars ($200,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment. . . .

CAL. BUS. & PROF. CODE § 6146 (Deering 1976 & Supp. 1985).

6. The statutory provision does not regulate defense counsel fees. The original legislation, however, directed the California State Bar Board of Governors to make recommendations to the legislature on a method for regulating defense counsel fees. *See* CAL. BUS. & PROF. CODE § 6146(c) (Deering 1976). The Board recommended that the existing system of compensation be maintained for defense counsel. *See* Note, *California Medical Injury Compensation Reform Act: An Equal Protection Challenge,* 52 S. CAL. L. REV. 829, 839 n.64 (1979).

7. The defendants included a physician, a professional medical corporation, and a hospital.

8. 37 Cal. 3d at 924, 695 P.2d at 165, 211 Cal. Rptr. at 78.

9. *Id.* The plaintiffs reached settlement with the physician and the professional corporation for $500,000.

10. *Id.* Under this agreement, the attorneys would be entitled to $122,800.

11. *Id.*. The maximum fee collectible under § 6146 of the Business and Professions Code was $90,800.

12. The California Probate Code requires a court to approve settlements of minors' claims and to authorize reasonable attorneys' fees from the proceeds of the settlement. CAL. PROB. CODE §§ 3500 & 3601 (Deering 1976 & Supp. 1984).

13. 37 Cal. 3d at 924-25, 695 P.2d at 166, 211 Cal. Rptr. at 79. Although the trial court determined that the attorney would collect a fair and reasonable contingency fee under the fee agreement, the trial court rejected the plaintiffs' constitutional challenges to the legislation and awarded fees pursuant to the fee schedule contained in § 6146.

14. *Id.* at 925-33, 695 P.2d at 166-72, 211 Cal. Rptr. at 79-85.

15. *See, e.g.,* American-Mexican Chamizal Convention Act of 1964, 22 U.S.C. § 277d-21 (1982) (attorneys' fee shall not exceed 10% of judgment rendered to owners of land acquired by the United States); Federal Tort Claims Act, 28 U.S.C. § 2678 (1982) (attorneys' fee limited to 20%-

several states have passed legislation limiting attorneys' fees.[16] In 1975, Congress considered passing federal medical malpractice legislation[17] to address a perceived crisis in medical malpractice insurance costs.[18] Congress believed that the state response to medical malpractice costs had been inadequate and warned that if the states failed to take comprehensive action, the federal government would assume responsibility.[19] Several states responded by enacting medical malpractice legislation.[20]

The California Legislature enacted the Medical Injury Compensation Reform Act (MICRA)[21] in 1975. The California Legislature designed

---

25% of any judgment rendered on claim against United States); Veterans Benefit Act, 38 U.S.C. § 3404(c) (1982) (attorneys' fee shall not exceed $10 in claims for benefits from Veterans Administration); Social Security Act, 42 U.S.C. § 406 (1982) (court may award reasonable attorneys' fee not in excess of 25% of benefits received by claimant).

16. *See, e.g.*, CAL. PROB. CODE §§ 910-911 (Deering 1981) (regulating attorneys' fees in probate matters); CAL. LAB. CODE § 4906 (Deering 1976) (regulating attorneys' fees in workers' compensation proceedings); 41 PA. CONS. STAT. ANN. § 406 (Purdon Supp. 1985) (regulating attorneys' fees in mortgage foreclosure actions); 41 PA. CONS. STAT. ANN. § 503 (Purdon 1971 & Supp. 1985) (regulating attorneys' fees in action on a mortgage); 69 PA. CONS. STAT. ANN. § 623 (Purdon 1971 & Supp. 1985) (regulating attorneys' fees in actions for repossession of a motor vehicle).

17. *See* Studley & Nye, *Federal Malpractice Bills*, in A LEGISLATOR'S GUIDE TO THE MEDICAL MALPRACTICE ISSUE 22 (1976).

18. Insurance companies providing malpractice insurance to physicians either announced drastic rate increases or withdrew from the medical malpractice market completely. These measures were necessary, according to the insurance companies, because of the great increases in the number of medical malpractice negligence claims and in the amounts awarded. *See generally* Note, *Which Equal Protection Standard for Medical Malpractice Legislation?*, 8 HASTINGS CONST. L.Q. 125, 125-30 (1980).

19. Studley & Nye, *supra* note 17, at 22.

20. These statutes contained a number of provisions aimed at reducing medical malpractice insurance costs and assuring the availability of quality health care services at a reasonable cost. *See* Grossman, *State by State Summary of Legislative Activities on Medical Malpractice*, in A LEGISLATOR'S GUIDE TO THE MEDICAL MALPRACTICE ISSUE 12 (1976).

In 1975, the following nine states enacted limitations on attorneys' contingency fees in medical malpractice actions: California, Idaho, Indiana, Iowa, Ohio, Oregon, Pennsylvania, Tennessee, and Wisconsin. *See* Grossman, *An Analysis of 1975 Legislation Relating to Medical Malpractice*, in A LEGISLATOR'S GUIDE TO THE MEDICAL MALPRACTICE ISSUE 10 (1976).

21. 1975 CAL. STATS. 3949. The following legislative statement reveals the purpose of MICRA:

> The Legislature finds and declares that there is a major health care crisis in the State of California attributable to skyrocketing malpractice premium costs and resulting in a potential breakdown of the health delivery system, severe hardships for the medically indigent, a denial of access for the economically marginal, and depletion of physicians such as to substantially worsen the quality of health care available to the citizens of this state. The Legislature acting within the scope of its police powers, finds the statutory remedy herein provided is intended to provide an adequate and reasonable remedy within the limit of what the foregoing public safety considerations permit now and into the foreseeable future.

Id. at 4007.

In 1975, insurance companies notified 2,000 southern California physicians that their insurance

MICRA to reduce medical malpractice insurance costs by reforming medical malpractice litigation.[22] The California statute, *inter alia*,[23] placed a limit on the amount of fees an attorney could charge under a contingency fee agreement in a medical malpractice action.[24]

Attorneys have challenged similar state statutory fees limitations on due process and equal protection grounds. In *Johnson v. St. Vincent Hospital, Inc.*,[25] the Indiana Supreme Court struck down a due process challenge to a state limitation on attorneys' fees.[26] The plaintiffs argued that the statutory limitation on attorneys' fees for medical malpractice suits would deprive medical malpractice victims of effective counsel.[27] The court, however, concluded that the statute would not "seriously impede" effective counsel.[28]

---

coverage would not be renewed. Four thousand physicians in northern California experienced a 380% increase in their insurance premiums. The number of medical malpractice claims increased almost 200% from 1968 to 1974. *See* Keene, *California's Medical Malpractice Crisis*, in A LEGISLATOR'S GUIDE TO THE MEDICAL MALPRACTICE ISSUE 27 (1976).

22. The Act also contains provisions designed to improve the quality of medical care and to assure the availability of medical malpractice insurance. The medical quality assurance provisions establish a system for investigating patient complaints, recording professional conduct in a central file, instituting disciplinary actions, and adopting provisions for continuing physician education. Note, *supra* note 6, at 834-37. The medical malpractice insurance provisions prohibit insurance companies from discriminating against physicians who choose arbitration, provide the right to a public hearing to insureds who have experienced a 10% or greater increase in premiums, and create a Joint Underwriting Association to operate in the event that medical malpractice insurance is not substantially available in a particular region. Keene, *supra* note 21, at 31. The Act includes reforms in medical malpractice litigation, medical quality assurance, and insurance review because the legislature determined that all interested parties (physicians, lawyers, insurance companies, and patients) must sacrifice in order to reach a fair solution to the medical malpractice crisis. *Id.* at 30.

23. The Act also limits recovery to $250,000 for noneconomic harm. CAL. CIV. CODE § 3333.2(b) (Deering 1984). *See* Fein v. Permanente Medical Group, 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368 (1985) ($250,000 limit on noneconomic damages in medical malpractice action does not violate due process or equal protection).

24. *See supra* note 5.

25. 273 Ind. 374, 404 N.E.2d 585 (1980). This case involved appeals from four separate cases.

26. *Id.* at 401-02, 404 N.E.2d at 602-03. The Indiana Medical Malpractice Act limits plaintiffs' attorneys' fees to 15% of any award made from a state's compensation fund. The Act also provides that a patient has the right to pay on a *per diem* basis, but this option must be exercised in writing at the time of employment. IND. STAT. ANN. § 16-9.5-5-1 (Burns 1983).

The plaintiffs also challenged other provisions of the Indiana Medical Malpractice Act: submission to a medical review panel, $500,000 limit on recovery, 2-year statute of limitations period for most cases, creation of a compensation fund, and limitations on pleadings. *Johnson*, 273 Ind. at 380-81, 404 N.E.2d at 590.

27. *Id.* at 401, 404 N.E.2d at 602.

28. *Id.* The court noted that the limitations on attorneys' fees do not apply to the first $100,000 of recovery because only awards over $100,000 are received from the compensation fund. Therefore, the plaintiff and attorney could choose any fee arrangement for awards below $100,000.

The New Hampshire Supreme Court reached the opposite conclusion in *Carson v. Maurer*,[29] holding a statutory limitation on contingent attorneys' fees unconstitutional on due process grounds.[30] The court noted that the limitation on attorneys' fees in medical malpractice cases would make such cases less attractive to attorneys.[31] As a result, medical malpractice victims would be unable to bring legitimate medical malpractice claims because of the unavailability of counsel.[32]

The *Carson* court also considered whether the statutory limitation violated the equal protection clause.[33] The plaintiffs claimed such a violation, arguing that the limitation on attorneys' fees was unrelated to the statute's purpose[34] of reducing medical malpractice insurance rates and health care costs.[35] The court agreed with the plaintiffs, noting that the relationship between the statute and its purpose was "questionable."[36] The court stated that jurors generally do not consider attorneys' fees in assessing damages and that, therefore, the limitation would be unlikely to

---

29. 120 N.H. 925, 424 A.2d 825 (1980).

30. *Id.* at 944-45, 424 A.2d at 838-39. The statutory provision provided that no attorney representing any party in any action for medical injury shall collect a contingency fee in excess of the following limits:

(a) Fifty percent of the first $1000 recovered;
(b) Forty percent of the next $2000 recovered;
(c) Thirty-three and one-third percent of the next $97,000 recovered;
(d) Twenty percent of all in excess of $100,000 recovered;
(e) Where the amount recovered is for the benefit of an infant or incompetent and the action is settled without trial, the foregoing limits shall apply, except that the fee in any amount recovered up to $50,000 shall not exceed 25 percent.

N.H. REV. STAT. ANN. § 507-C:8 (1983).

31. 120 N.H. at 945, 424 A.2d at 839.

32. *Id.*

33. *Id.* The plaintiffs argued that the distinction drawn between plaintiffs with medical malpractice claims and plaintiffs with other personal injury claims was unrelated to the purpose of the statute. Therefore, the classification denied equal protection under the law between persons similarly situated.

34. The United States Supreme Court has acknowledged that the legislature may choose to address a particular social problem and create classifications without violating the equal protection clause:

> Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. . . . Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . . The prohibition of the Equal Protection Clause goes no further than invidious discrimination.

Williamson v. Lee Optical, Inc., 348 U.S. 483, 489 (1955).

35. 120 N.H. at 945, 424 A.2d at 839. The overall purpose of the New Hampshire statute was to contain the costs of the medical injury reparations system. *Id.*

36. *Id.*

reduce jury awards or insurance costs.[37]

In *DeFilippo v. Beck*,[38] the United States District Court for the District of Delaware reviewed an equal protection challenge to a statutory limitation on attorneys' fees in medical malpractice actions,[39] holding that the statute did not violate the equal protection clause.[40] Because medical malpractice plaintiffs were not members of a suspect or quasi-suspect class and the statute did not infringe upon any fundamental right, the court reviewed the statute under the rational basis test.[41] The court concluded that the classification was rationally related to the legislative objective of alleviating medical malpractice costs because the limitations would discourage attorneys from pursuing frivolous suits and would encourage prompt settlements.[42]

In *Roa v. Lodi Medical Group, Inc.*,[43] the California Supreme Court reviewed due process, equal protection, and separation of powers challenges to the statutory limitation on contingent attorneys' fees in medical malpractice actions. First, the court considered whether the statute violated the due process right of medical malpractice plaintiffs to retain counsel.[44] The plaintiffs argued that the fees under the statute were so unreasonable that it would be impossible to find an attorney to represent

37. *Id.*

38. 520 F. Supp. 1009 (D. Del. 1981).

39. The statute limits plaintiffs' attorneys' fees in medical malpractice to 35% of the first $100,000, 25% of the next $100,000, and 10% of the balance of any awarded damages. DEL. CODE ANN. tit. 18, § 6865 (1984).

40. 520 F. Supp. at 1016.

41. *Id.* Until the 1970s, the Supreme Court applied two standards to equal protection review: the strict scrutiny standard and the rational basis test. The Court applied the strict scrutiny standard when a legislative classification affected a fundamental right or distinguished between persons upon some suspect basis. Under strict scrutiny, the legislative classifications must be necessary to promote a compelling state interest.

If legislation did not affect a fundamental right or create suspect classifications, the Court applied the rational basis test. Under the rational basis test, the legislative classification merely has to be reasonably related to a legitimate legislative purpose.

An intermediate standard of review arose during the 1970s. This standard falls between the strict scrutiny test and the rational basis test. The Supreme Court has applied an intermediate standard of review when legislation has created quasi-suspect classifications based on gender or illegitimacy. Under this standard, the classification must serve important governmental ends and must have a fair and substantial relation to achievement of those ends. G. GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 670-74 (10th ed. 1980); J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 2, at 586-94.

42. 520 F. Supp. at 1016.

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

44. *Id.* at 925, 695 P.2d at 166, 211 Cal. Rptr. at 79. Section 6146 does not deny plaintiffs the right to retain counsel. Rather, it simply limits the compensation an attorney may obtain.

them.[45] Moreover, the statute would force most competent attorneys into more profitable personal injury cases, further infringing the plaintiffs' right to obtain counsel.[46]

The court, however, found that the statute authorized reasonably generous attorneys' fees[47] and that no factual data supported the plaintiffs' claim that the statute was driving competent lawyers out of medical malpractice litigation.[48] The court concluded that it was unlikely that the statute would deny plaintiffs access to the court.[49] In addition, the court noted that the validity of statutory limits on attorneys' fees had been well established.[50]

The court next considered the plaintiffs' claim that the statute violated the equal protection clause. The plaintiffs contended that the distinction between medical malpractice plaintiffs and other personal injury plaintiffs was unrelated to the purpose of the statute and, therefore, the classification violated the equal protection clause.[51] The plaintiffs argued that jurors do not consider attorneys' fees in reaching a verdict.[52] Thus, costs to the insurance industry would be the same whether or not attorneys' fees were limited.[53]

The court, however, rejected the plaintiffs' contention, finding that the statute may prompt plaintiffs to agree to lower settlements because attorneys would receive a much "smaller bite" of the settlement under the statute.[54] Because lower settlements would reduce malpractice insurance costs, the classification was reasonably related to the legislative purpose of the statute.[55] In addition, the court noted that the statute may deter "attorneys from either instituting frivolous suits or encouraging their cli-

45. *Id.* at 927-28, 695 P.2d at 168, 211 Cal. Rptr. at 81.
46. *Id.* at 929-30, 695 P.2d at 169, 211 Cal. Rptr. at 82-83.
47. *Id.* at 928, 695 P.2d at 168-69, 211 Cal. Rptr. at 81.
48. *Id.* at 930, 695 P.2d at 169, 211 Cal. Rptr. at 83.
49. *Id.* at 926, 695 P.2d at 166, 211 Cal. Rptr. at 79.
50. *Id.* at 926, 695 P.2d at 167, 211 Cal. Rptr. at 80.
51. *Id.* at 930-31, 695 P.2d at 170, 211 Cal. Rptr. at 83.
52. *Id.* at 930, 695 P.2d at 170, 211 Cal. Rptr. at 83.
53. *Id.*
54. *Id.* at 931, 695 P.2d at 170, 211 Cal. Rptr. at 83.
55. *Id.* at 931, 695 P.2d at 170, 211 Cal. Rptr. at 83-84. The court also pointed out that the limitations on attorneys' fees were rationally related to other MICRA provisions, such as the provision limiting noneconomic damages. *See supra* note 23. The court concluded that the legislature may have determined that the limitations on attorneys' fees were an appropriate means of protecting the plaintiffs' recovery that was already reduced by the other MICRA provisions. *Id.* at 932, 695 P.2d at 171, 211 Cal. Rptr. at 84.

ents to hold out for unrealistically high settlements."[56]

Finally, the court considered whether the statute violated the separation of powers doctrine.[57] The plaintiffs argued that the legislature's regulation of attorneys' fees invaded a matter left solely to the judiciary.[58] The court rejected the plaintiffs' argument, noting that regulation of attorneys' fees has never been within the sole province of the judiciary and that the legislature has regulated attorneys' fees throughout history.[59]

The *Roa* dissent[60] argued that the statutory limitations denied medical malpractice plaintiffs due process and equal protection.[61] The dissent contended that the limitation significantly interfered with the plaintiffs' right to retain counsel because the plaintiffs' attorneys would likely abandon medical malpractice litigation and pursue other more lucrative personal injury cases.[62]

The dissent also argued that the statutory limitation denied equal protection, contending that the limitations created classifications that were not rationally related to the legislative objectives of increasing plaintiffs' recovery[63] and reducing medical malpractice insurance costs.[64] No ra-

56. *Id.* at 931, 695 P.2d at 170-71, 211 Cal. Rptr. at 84.

The court also rejected other equal protection arguments. The court rejected plaintiffs' contention that the statute violated the equal protection clause because it limited plaintiffs' attorneys' fees but not defense counsel's fees. The court concluded that the legislation could have determined that the plaintiffs need additional protection to overcome diminished recoveries caused by high contingency fees. *Id.* at 932, 695 P.2d at 171, 211 Cal. Rptr. at 84.

The court also rejected plaintiffs' contention that the statute is a greater burden to more seriously injured medical malpractice victims. The plaintiffs argued that the sliding scale limitation on attorneys' fees makes it more difficult for a seriously injured plaintiff to find an attorney willing to incur the extra expense and time required in such cases. The court concluded that the legislature could have believed that the sliding scale approach was more equitable than the flat contingency fee. *Id.* at 933, 695 P.2d at 172, 211 Cal. Rptr. at 85.

57. *Id.*

58. *Id.*

59. *Id.*

60. Chief Justice Bird wrote for the three-justice dissent.

61. The dissent did not address the separation of powers challenge. The dissent, however, found that § 6146 also violated the plaintiffs' first amendment right to petition the government for redress of grievances. The dissent relied heavily upon the federal district court opinion, National Ass'n of Radiation Survivors v. Walters, 589 F. Supp. 1302 (N.D. Cal. 1984), which concluded that a limit on attorneys' fees infringed upon the right of petition. The dissent's argument is largely undermined by the Supreme Court's decision in that case, Walters v. National Ass'n of Radiation Survivors, 105 S. Ct. 3180 (1985) (upholding the validity of the $10 linit on attorneys' fees), which the Court handed down after the *Roa* decision.

62. 37 Cal. 3d at 943, 695 P.2d at 179, 211 Cal. Rptr. at 92.

63. *Id* at 944, 695 P.2d at 180, 211 Cal. Rptr. at 93.

64. The dissent argued that in cases involving extensive damages, § 6146 would encourage

tional basis existed for restricting attorneys' fees in only medical malpractice actions because the danger of frivolous suits also existed in general personal injury actions.[65] In addition, no rational basis existed for restricting only the plaintiff's attorneys' fees.[66] Although insurance costs would remain unchanged regardless of the size of the plaintiff's attorneys' fees,[67] defense counsel fees would directly affect insurance costs because insurance companies directly pay such fees.[68]

The *Roa* court examined the constitutionality of limitations on attorneys' fees in medical malpractice actions more thoroughly than any previous court.[69] The *Roa* majority properly concluded that the statutory limitation on attorneys' fees did not deny the plaintiffs access to counsel, because the plaintiffs made no factual showing that the limitation would actually deny medical malpractice plaintiffs the right to retain counsel.[70]

The majority also properly decided the equal protection challenge, focusing on the central purpose of MICRA and examining whether the statutory limitation was rationally related to the purpose of the statute. If a problem exists in a particular area, the legislature may enact legislation to deal with only that particular area. The legislature may seek to solve social problems "one step at a time" and is under no obligation to address all personal injury litigation problems at once.[71] The legislature may have determined that attorneys' fees contributed to soaring medical malpractice costs.[72] The legislature may have rationally believed that the

---

plaintiffs' attorneys to settle and defense counsel to devote more time and undertake expensive discovery prior to settlement. As a result, insurance costs would increase rather than decrease. The dissent's argument, however, ignored the costs saved by avoiding trial and reaching settlement. *Id.* at 948, 695 P.2d at 182-83, 211 Cal. Rptr. at 95-96.

65. *Id.* at 947, 695 P.2d at 182, 211 Cal. Rptr. at 95.

66. *Id.* at 951, 695 P.2d at 185, 211 Cal. Rptr. at 98.

67. This argument ignored the fact that the greater the plaintiff's recovery, the greater the insurance costs. If a plaintiff's attorney can receive 40% of any recovery, he may push for a higher award.

68. The dissent contended that § 6146 was grossly underinclusive with regard to the goal of decreasing premiums and argued that restricting defense costs would further reduce insurance costs. The legislature considered regulation of defense counsel fees but decided that it was not necessary. *See supra* note 6.

69. *See supra* notes 25-42 and accompanying text.

70. *See supra* notes 47-48 and accompanying text.

71. *See supra* note 34.

72. The California medical community asserted that unscrupulous lawyers and their high contingency fees caused the medical malpractice crisis. The legal community contended that insurance companies made bad investments and charged high insurance rates to pay for losses on the stock market and that medical malpractice was widespread. The California Auditor General studied insurance company finances and concluded that insurance companies were on the verge of bankruptcy

plaintiffs' attorneys were overcompensated at the expense of the plaintiffs as well as insurance companies.[73]

The *Roa* decision strengthens the position of statutory limitations on attorneys' fees in medical malpractice suits. Other courts evaluating similar statutory limitations will likely rely on this decision and follow its comprehensive constitutional analysis.

L.A.M.

---

mainly because of significant increases in the number of medical malpractice claims and in the amounts of recovery. *See* Keene, *supra* note 21, at 28 & 32.

73. *See* Note, *supra* note 6, at 943.