LAW OFFICES OF
DANIEL P. BUTTAFUOCO & ASSOCIATES, PLLC
144 WOODBURY ROAD
WOODBURY, NEW YORK 11797
PHONE (516) 746-8100 FAX (516) 746-6473 OR 8635

DANIEL P. BUTTAFUOCO[1]

MARK T. FREELEY•
JAMES S. MCCARTHY
JAMES V. MATTONE
SHAWN M. ALFANO
ELLEN BUCHHOLZ[□]
JAVIER E. BUCOBO

ELLEN-JEANNE BERNIUS
ADMINISTRATOR

BRENDA J. FREELEY
PARALEGAL

[1] BOARD CERTIFIED IN CIVIL TRIAL ADVOCACY
• ALSO ADMITTED IN NJ & FL
[□] [illegible]

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UNITED WE STAND
GOD BLESS AMERICA

February 14, 2003

WABC Radio
2 Pennsylvania Plaza
New York, NY 10121
Attn: Curtis Sliwa and Ronald Kuby

RE: Caps on Pain and Suffering Recovery in Medical Malpractice Claims

Dear Curtis and Kuby:

I am an avid listener of your show and enjoy hearing the extreme sides of the issues being discussed. I must admit that being a trial lawyer (sorry Curtis) I do side with Ron on many issues and especially on this issue. I will not rant and rave about why caps are bad, I will merely provide you (really Curtis) with the facts on this matter:

The insurance industry controls our health care system. It controls patient access to treatment, quality of care, how much doctors are paid, and how much doctors pay for overhead expenses. Reducing the amount the insurance industry should pay when a patient is harmed by medical negligence only further harms critically injured patients who may need a lifetime of costly medical monitoring and care, and enriches the insurance industry. Until we reform the insurance industry - by reducing the power the insurance industry has over our health care system and limiting the amount it can charge doctors for insurance coverage - we won't help doctors or patients.

- **If caps worked, doctors - like those in West Virginia - wouldn't go on strike.**
  West Virginia just passed caps (on injured patients) last year, and insurers did not reduce rates. The West Virginia walk-out proved that caps don't reduce doctors' malpractice premiums.

- **If caps worked, insurers would reduce rates.**
  Nevada insurers pled with the legislature to pass caps on patients' rights last year. As soon as caps were enacted, insurers announced they would **not** reduce rates.

- **Caps don't guarantee lower rates for doctors.**
  In Missouri, which has caps, the number of claims has been declining, the cost per claim has been declining, yet medical malpractice premiums have been spiraling out of control. If premiums were based on claims and the cost of claims, Missouri's rates should be going down, not up. Clearly, caps are not the solution.

California's caps did not help doctors - insurance reform did.
California has the most severe restrictions on patients' rights in the country. Despite a $250,000 cap on non-economic damages, malpractice rates increased 190% between 1976 and 1988. In the past two years alone, insurers have requested rate increases of 44%. The only reason rates didn't go up more is because California passed meaningful insurance reform, Proposition 103, in 1988. Now the state's insurance industry is no longer exempt from anti-trust law. That means insurers can no longer engage in price-fixing, and can no longer raise rates whenever they feel like it. Insurance reform ....the reform doctors and patients really need ....forced a roll-back of 20% in premiums and helped stabilize rates.

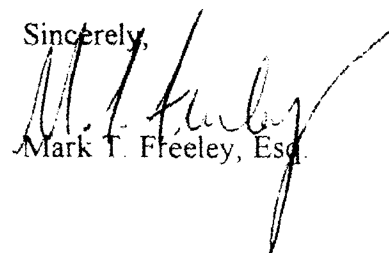
Even the insurance industry knows caps won't make a difference.
When Florida passed caps and other restrictions on patients in the mid-1980s, Aetna and St. Paul studied their own medical malpractice claims history. Their internal memos conclude that caps do not save doctors money on medical malpractice premiums.

Caps don't solve problems, they create new ones. If the insurance company won't pay for the care and loss of patients critically injured by medical malpractice, who will? Taxpayers.

If you want to fix the problem, take away the insurance companies' anti-trust exemption to keep them from colluding and price-fixing; require prior rate approval; and make them demonstrate the need for a rate increase in a public hearing.

Finally, as Curtis frequently speaks of trial lawyers keeping "most" of the recovery when a jury awards a verdict, I have enclosed a sample contingency fee retainer that is required to be used in medical malpractice actions in New York. As can be seen Curtis, it is not "most," not 50%, not 40%, not even 33 1/3%, it is to be fair and accurate 30% on the 1st $250K, 25% on the next $250K, 20% on the next $500K and 15% on the next $250K. Moreover, a doctor must first review all the pertinent medical records and must state that there is a valid basis to bring a malpractice action. On top of all this, defendants (doctors) prevail in malpractice actions (according to the NY Jury Verdict reports approximate 2/3rds of the time) Curtis, do you see any reason for a trial lawyer to bring a frivolous lawsuit which will cost thousands of dollars and countless hours to prosecute? I don't.

Sincerely,



Mark T. Freeley, Esq.

MTF:mp
Enclosure