

Macy Messer: Caps on “Pain and Suffering” Make Little of Her Losses

Macy Messer is a bright, beautiful six-year-old girl who, because of preventable medical error, must spend her life in an electronic wheelchair, able to communicate only through a special computer screen. She will never be able to hold her head up, walk, talk, or eat solid food; she must be fed through a feeding tube that goes into her stomach. Her brother and sister adore her, but Macy will never be able to run through a field in the summer or slide through the snow with her siblings. Macy’s parents tell her they love her, but Macy will never be able to repeat those words.

Macy was born healthy, but like more than 60 percent of infants, she had jaundice, a condition that occurs when a newborn baby’s liver is not yet fully functional. Jaundice is easily treatable, but if it goes undetected, it causes severe brain damage, killing the part of the brain that handles motor control. Children develop a neurological syndrome called kernicterus, which causes cerebral palsy, hearing loss, mental retardation, and sometimes death.

Kernicterus was eradicated in the United States in the 1970’s, but tragically, early discharge (48 hours for a pre-term baby), coupled with lack of caution about the dangers of severe jaundice, has given rise to unprecedented numbers of children with kernicterus. Macy is one of several children in North Carolina with kernicterus, but many more children nationwide suffer from this condition.

Legislative proposals to cap “non-economic damages” would keep children like Macy from receiving just compensation for losses that cannot be measured by lost wages or the cost of medical therapies. What is it worth to walk, to talk, to be able to eat birthday cake or ride bikes with friends, to be able to tell your mother when



Due to preventable medical error, Macy will never be able to hold her head up, walk, talk, or eat solid food. Is \$250,000 really just compensation for these losses?

you’re feeling sad and need a hug—or to be able to return that hug?

According to Dr. Jeffrey Koplan, a past director of the Centers for Disease Control, “Kernicterus is a preventable problem, and it is tragic and absolutely should never take place.” It is preventable provided doctors and caregivers follow a simple set of procedures. If they don’t, children and their families have to live with the consequences.

How can the government restrict the right of juries to compensate children like Macy for the needless loss of their ability to do the simple things most people take for granted? Is \$250,000 really what a child’s dreams are worth? ■

Macy Messer is represented by Tracy Kenyon Lischer of Pulley Watson King & Lischer in Durham. For more information about this story, call 919.682.9691.