

MONICA'S STORY

A real case demonstrating
the unfairness of damage caps.

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On a Monday evening in August, as it was just getting dark, 12-year-old Monica came home crying from playing outside. A friend told Monica's mom that she and Monica had been riding their bicycles together, when the friend noticed that Monica must have fallen behind her. When she looked back, she saw that Monica had fallen to the pavement and appeared to be unconscious.

Monica's mother, concerned that Monica's left eye was blackened and badly swollen and that she was crying inconsolably, took her to a local hospital in Southeastern Pennsylvania. Monica's mom told the emergency department (ED) personnel what had happened, providing a complete history of Monica's injury, including that she had fallen on her head when her bike "flipped;" that her friend reported that she was "out" for three minutes; that she had acted "drunk" after she "came to;" that she has been very tired since then; that she kept going to sleep; that she did not know what day it was; and that she complained of headache and nausea, but so far had not vomited. All of these facts suggested that Monica had suffered a serious brain injury.

Monica was examined by the ED physician. During this examination she vomited so much that she filled three basins. When the swelling in Monica's left eye seemed to be getting even worse, her mother insisted that she be X-rayed. A plain X-ray was taken. The ED doctor read the X-rays as normal and discharged Monica without ever requesting that she be seen by a neurologist, without a CT scan (which would have shown more than a simple X-ray that only shows bones), and without examining her again. Monica's mother was given no instructions to arrange for a follow-up check with any type of physician.

Monica's mom kept watch over her sleeping daughter all that night and the next two days, Tuesday and Wednesday. On Saturday, Monica and her sister baby-sat at their aunt's home. On Sunday, the family went to church and later to a concert at a local park. Monica seemed fine during these four days to all those around her. The only thing out of the ordinary was that she had a very blackened left eye and some blackening below her right eye, which were the same as they had been that evening when she was examined in the hospital.

On Monday morning, Monica was found dead in bed, with pinkish-red fluid on her face and pillow. An autopsy determined that she had died from a massive blood clot of the brain. The blood clot came from an artery in her brain, which had been severed by a fracture in her skull. The initial bleeding from the artery had been suppressed by the dura—the tough covering of the brain which actually adheres strongly to the inside of the cranium. Over the six days from the injury to Monica's death, the pulsing artery exerted force to slightly expand the space between Monica's skull and dura, until the early hours of Monday morning, when the clot finally became big enough to cause her death at the age of 12.

An investigation into Monica's extremely premature death revealed that no one in the ED had ever measured or recorded Monica's Glasgow Coma Scale, a standard measuring protocol for assessing a patient's level of brain injury. The history of her injury and her symptoms following the trauma would have yielded a Glasgow score that showed a serious brain injury. Also, the X-rays taken in the ED were of such poor quality that they were almost impossible to read, yet none of the health care professionals in the ED ever ordered new X-rays, which could have been of better quality. Very close inspection of even the poor quality X-rays, which did not occur in the ED, showed the skull fracture. The fracture and the bleeding artery would have been easily seen had a CT scan been ordered and performed. The ED personnel also failed to recognize the

significance of Monica's black eye. This blackening, sometimes called "raccoon eye" or Battle's sign, is a sign of bleeding from a fractured skull. Despite the fact that there was no evidence of any direct trauma to the eye that could otherwise account for the blackening, the ED personnel did nothing to investigate the cause of the black eye. A neurologist would have recognized this symptom as a sign of a serious brain injury. The failure to provide Monica with a consultation by a neurologist, a CT scan, an admission to the hospital for close monitoring, and directions to seek further competent medical examination and monitoring led to her death.

Does the loss to Monica's family as a result of her entirely preventable death have a limit? Can a damage cap of \$250,000 ever begin to compensate Monica's mother for the loss that she feels every day in the pit of her stomach when she wakes up Monica's sister for school and passes Monica's empty room and bed? When she sees laughing teenagers at the mall? When she sees Monica's friends taking driving lessons or having their prom pictures taken? When she sees a high school graduation? When she overhears young adults talking about college? When she sees a wedding invitation, dress or ceremony? When she sees a baby? When she sees any of the myriad of things that Monica never had a chance to experience?

Monica's family has been devastated by her death. Although she has tried to provide Monica's sister with a normal life, Monica's mother looks at each milestone in her surviving daughter's life with pride, but also with heart-wrenching sadness because each milestone in her surviving daughter's life is a reminder of a milestone that Monica never experienced. How does any one-size-fits-all cap begin to be fair to Monica's family?

