

SUPREME COURT OF LOUISIANA

No. 99-C-0232

DEBORAH BATSON, EULA MAYE BATSON
AND BILLY M. BATSON

Versus

SOUTH LOUISIANA MEDICAL CENTER AND
STATE OF LOUISIANA, THROUGH THE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

CALOGERO, C.J., Concurring

I additionally concur and subscribe to Justice Lemmon's concurring opinion. Specifically, I agree with Justice Lemmon regarding the following: 1) his discussion of cause-in-fact and duty/risk; 2) the distinction between the first tortfeasor's liability and the second tortfeasor's liability for sequentially-caused injuries, *Weber v. Charity Hosp. of La. at New Orleans*, 475 So. 2d 1047 (La. 1985); 3) the inapplicability of a single statutory cap to two separate and distinct injuries that might give rise to two separate actions, even though the acts occur during the same hospitalization; 4) the strict construction of the special legislation, the \$500,000 cap, because the limitation is in derogation of the rights of tort victims; and 5) the content of Justice Lemmon's second footnote, which counters the contention of one of the dissenting justices in this case. I simply add, regarding this latter point, that the majority opinion logically proceeds directly to the only statute before us, the Malpractice Liability for State Services Act, and determines whether that cap applies in this case. The facts and the law in this case do not compel us to address the Medical Malpractice Act, which limits liability for private qualified health care providers, before we address the malpractice act that limits liability for state health care providers. In a case like this, we need not first discuss a multiple cap scenario under the private act simply because both acts similarly limit recovery in the same amount and in the same manner.