



# Wisconsin Medical Society v. Morgan, 787 N.W.2d 22 (Wis. 2010)

Topics Covered: Taxation of Physicians

## Issue

The issue in this case is whether the Wisconsin Legislature could legally authorize the transfer of \$200 million from the Wisconsin Injured Patients and Family Compensation Fund ("the Fund") to a variety of health programs that have nothing to do with the Fund's purpose of paying medical malpractice claims.

## AMA Interest

The Fund transfer acts as a selective tax on physicians for general revenue purposes. The AMA opposes such taxes.

## Case Summary

Most physicians in Wisconsin, as well as nurse anesthetists, are required to contribute to the Fund. The Fund is obligated to provide coverage for excess medical malpractice claims (above a cap on amounts directly payable by the providers). The Wisconsin Legislature, by statute, directed that \$200 million be transferred from the Fund to various Medicaid-related health care programs, none of which had to do with excess medical malpractice claims.

The Wisconsin Medical Society ("WMS") sued various state officials to restore the \$200 million to the Fund and to prevent further such transfers. The suit contended that the transfer was: (1) a "taking" without just compensation, in violation of the federal and state constitutions, (2) an impairment of contract, in violation of the federal and state constitutions, (3) a common law breach of a statutorily created contract, (4) an invalid tax, in violation of the state constitution, (5) an irrational tax classification, in violation of the federal and state constitutions, (6) a discriminatory tax, in violation of the Equal Protection Clauses of the federal and state constitutions, and (7) a common law breach of statutorily created fiduciary duties.

The trial court entered summary judgment in favor of the state. It held that all claims other than that which asserted a taking of private property for public purposes were barred under the sovereign immunity doctrine. It further held that physicians do not have a property interest in the Fund. The Wisconsin Medical Society appealed to the Wisconsin Court of Appeals, but the appeal was transferred directly to the Wisconsin Supreme Court without a decision in the Court of Appeals.

The Wisconsin Supreme Court overturned the trial court, holding in favor of WMS. The Court ordered the state to restore the \$200 million to the Fund.

### **Litigation Center Involvement**

The Litigation Center assisted WMS with its litigation expenses and also filed an *amicus curiae* brief in the Court of Appeals.

Court of Appeals of Wisconsin brief