



ch. 3, § 1, 1987 Tex. Gen. Laws 51, 51 *repealed by* Act of May 24, 1997, 75<sup>th</sup> Leg., R.S., Ch. 1008, § 6 (a), 1997 Tex. Gen. Laws 3091, 3602 (current version at TEX. FIN. CODE § 304.102).

In 1995, the Legislature added subchapter P to the Medical Liability and Insurance Improvement Act, including for the first time a prejudgment interest mandate specifically for health-care liability claims. Subchapter P provides that the judgment in any health care liability claim “must include prejudgment interest on past damages found by the trier of fact” if such claim is not settled within six months of notice. *See* TEX. REV. CIV. STAT. ANN. art. 4590i, § 16.02(b) (Supp. 2002).

From this brief history, I draw two conclusions. First, when the Legislature enacted the liability cap (subchapter K) in 1977, it did not specifically intend to limit prejudgment interest because it was not available. Second, when the Legislature added subchapter P in 1995, it intended that prejudgment interest be included in judgments covered by the Act. Today, however, the Court reads subchapter P out of the Act for those claimants whose past damages exceed the cap. Because the Act plainly requires the award of prejudgment interest on past damages and nothing in the Act’s text or history suggests that the cap was intended to bar its award, I respectfully dissent.

The Court bases today’s result on *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887 (Tex. 2000). In *Auld*, we held that prejudgment interest, payable under the interest statute enacted after *Cavnar*, could be recovered “on damages subject to the cap only up to the amount of the cap.” *Id.* at 901. In other words, prejudgment interest on capped damages cannot be added to cause the judgment to exceed the statutory cap. Although the Legislature did not have prejudgment interest specifically in mind when it created the cap, the Court reasoned that it did intend to cap all common law damages except those it expressly excluded. *Id.* at 898. Thus, when *Cavnar* extended prejudgment interest to personal injury

and death cases, such interest came under the cap because prejudgment interest is a part of common law damages. *Id.*

The Court recognized, however, that the Legislature's subsequent codification of its own prejudgment interest statute created a potential conflict with the cap on medical malpractice damages because the prejudgment interest statute mandated the award of prejudgment interest while the cap prevented its recovery in some cases. *Compare* TEX. REV. CIV. STAT. ANN. art. 5069-1.05, § 6(a) ("A judgment in a wrongful death, personal injury, or property damages case must include prejudgment interest.") *with id.* art. 4590i, § 11.02(a) (directing that a defendant's civil liability for damages be limited to a statutorily-determined amount). The Court reconciled the conflict in favor of the cap, relying on a maxim of statutory construction, and the Legislature's perceived purpose for capping health-care liability damages. Applying the statutory construction principle that the more specific statute controls over the more general, the Court wrote:

With regard to the cap in article 4590i, section 11.02 and the general prejudgment-interest statute in article 5069-1.05, the former is the more specific statute in that it applies only to health-care liability claims, while the latter is more general because it applies to broader categories of claims, including all types of personal injury, property damage, and wrongful death. Thus, the cap in article 4590i prevails over the general prejudgment-interest statute.

*Auld*, 34 S.W.3d at 901. Regarding the legislation's purpose, the Court explained that the Legislature intended the Act to be a "self-contained structure for determining a health-care provider's liability and damages" whose purpose was "to limit, not expand" such liability and that permitting statutory prejudgment interest to exceed the liability cap would produce "a result inconsistent with legislative intent." *Id.* at 900-01. Because the health-care liability claim predated subchapter P, the Court expressly reserved the issue before us today – whether the cap also limits an award of prejudgment interest under subchapter P, the

Act's self-contained, prejudgment interest provision. *Id.* at 900 n.13.

Relying on *Auld*, the Court now holds that the cap also limits subchapter P prejudgment interest. But Using *Auld's* statutory construction rule yields a different result when the cap is compared to the Act's self-contained, prejudgment interest provision. No longer are we comparing the medical malpractice cap with a prejudgment interest statute generally applicable to tort damages. Here, subchapter P is the more specific provision because it expressly mandates the recovery of prejudgment interest in successful health-care liability cases, evidencing an explicit intent to exclude prejudgment interest from the more general application of the cap. *See* TEX. REV. CIV. STAT. ANN. art. 4590i, § 16.02 (Supp. 2002). Yet another rule of statutory construction provides that when two statutes conflict, the later-enacted provision controls. *See* TEX. GOV'T CODE § 311.025. This rule likewise supports recovery of prejudgment interest in this case because subchapter P is not only the more specific provision, but also the later enacted one.

Two years ago in *Auld*, the Court described the Act as a “self-contained structure for determining a health-care provider’s liability and damages.” *Auld*, 34 S.W.3d at 901. Today, the Court interprets the Act not by well-settled rules of statutory construction, but by deference to the Act’s “overarching goal” of limiting health care liability. \_\_\_ S.W.3d at \_\_\_.

The Legislature, however, was not motivated solely by a desire to limit health care liability for its own sake. The Legislature perceived a crisis in the affordability of medical professional insurance, which would inevitably impact the availability of medical care. *See Auld*, 34 S.W.3d at 893. To increase the “availability of medical care for Texans,” the Legislature sought to make health care liability damages more predictable so that medical professional insurance would be available at affordable rates. *Id.*

Mandating the award of prejudgment interest on past damages, as the Legislature has done under

subchapter P, does not undermine that goal. Prejudgment interest is subject to precise calculation, and thus the maximum amount of additional exposure may readily be anticipated by insurance carriers. *See Auld*, 34 S.W.3d at 909 (Hankinson, J. concurring and dissenting).

Had the Legislature intended to limit the award of prejudgment interest under subchapter K's cap, it would have referred to that subchapter when it added subchapter P in 1995. Furthermore, had the Legislature intended for prejudgment interest to be awarded in some health-care liability cases but not others, it would not have chosen the mandatory language it did for subchapter P. Given the self-contained structure of the Act, it seems extremely unlikely to me that the Legislature would have both ignored subchapter K and used mandatory language in subchapter P had it not intended to exempt prejudgment interest on past damages from the liability cap. Because the Court concludes otherwise, I dissent.

---

Thomas R. Phillips  
Chief Justice

Opinion delivered: June 27, 2002