

MEDIA ADVISORY

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Supreme Court Rules ‘Cap on Damages’ Unconstitutional *Statute found unconstitutional after a medical malpractice victim’s face literally falls off after surgery*

Atlanta, GA—On March 22 the Georgia Supreme Court ruled that a controversial law capping the amount of money an injured patient could recover from a negligent medical provider is unconstitutional. The 7-0 decision was written by Justice Hunstein. Senate Bill 3, enacted in 2005, stated that a victim of medical malpractice could be limited in the amount of damages they can receive from a jury verdict, even if the harm caused was catastrophic in nature.

Nestlehutt v. Atlanta Oculoplastic Surgery, P.C., from Fulton County State Court, highlighted how caps on damages fundamentally restrict the constitutional rights of those who have been harmed by a healthcare provider. The malpractice case was brought by plaintiff Betty Nestlehutt, who is represented by attorneys Adam Malone and Frank Ilardi.

Betty Nestlehutt and her husband of more than 50 years worked together in their real estate business. Betty handled most of the client interaction for the firm, and she eventually noticed that many potential customers were going to younger agents. Concerned with the bags under her eyes and lines around her mouth, Betty Nestlehutt eventually decided to schedule a consultation with Dr. Harvey P. Cole of Atlanta Oculoplastic Surgery, P.C. Even though Betty was 71 at the time, Dr. Cole recommended a full facelift as well as a battery of other surgical procedures.

The combination of procedures was risky for someone of Betty’s age. The surgery severely impacted the blood flow to her face. After several weeks, the skin on Betty Nestlehutt’s face began to die and fall off.

“Betty Nestlehutt was the face of her real estate business,” **Malone said.** “Her face was so horrifically disfigured that she was no longer able to even leave her house. The pain she experienced over a long period of time is difficult to comprehend. Photographs of her disfigurement are too gruesome for public distribution. The damage is permanent.”

The case was heard in Fulton State Court before a jury of 12 citizens. After hearing the testimony and seeing the evidence, they returned a verdict in favor of the Nestlehutts. The jury granted recovery for past and future medical expenses and concluded that the severe impact to Betty Nestlehutt’s quality of life warranted \$900,000 in “non-economic” damages. However, this was more than the \$350,000 cap on noneconomic damages in the 2005 law, which overrides the judgment of a jury that has been presented with the facts.

Judge Diane Bessen ruled that the statute capping a jury’s verdict was unconstitutional. The decision was appealed by the defendants to the Georgia Supreme Court. After hearing arguments in the fall of 2009, the Supreme Court agreed with Judge Bessen and ruled the statute unconstitutional.

“We applaud the Justices on our Supreme Court and their decision which appropriately concluded that a one-size-fits-all predetermined cap on damages violates protections guaranteed by the Georgia Constitution,” **said Danny Orrock, Deputy Director of Georgia Watch.** “The decision favors the protection of patients and their constitutional rights. It restores the promise of justice for all and the rights of all Georgians -- young and old, rich and poor -- to access the courts. These are guarantees set forth by our Constitution that were stripped away in 2005.”

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