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Client Alert

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Georgia Supreme Court to Decide Constitutionality of Georgia's Medical Liability Caps

On September 15, 2009, the Georgia Supreme Court heard oral arguments in *Atlanta Oculoplastic Surgery v. Nestlehutt*, a case challenging the constitutionality of Georgia's caps on noneconomic damages in medical liability cases. The statute, O.C.G.A. § 51-13-1, was enacted by the Georgia General Assembly in 2005 as part of a comprehensive tort reform effort. The statute was created in response to the growing concern that medical providers and facilities and insurance providers were leaving the state as a result of the cost of medical malpractice awards.

The *Nestlehutt* jury awarded Betty Nestlehutt $1,265,000 after finding that her plastic surgeon negligently performed a facelift and laser resurfacing. The total award was reduced to $465,000 after applying Georgia's caps on noneconomic damages, which limits damages to $350,000 for claims against one or more doctors and a total of $1,050,000 for claims against multiple healthcare providers and their medical facilities. The Nestlehutts filed a motion to lift the caps and declare the law unconstitutional. On February 9, 2009, Fulton County Judge Diane E. Bessen did just that, holding that the damages cap violates both the right to a jury trial and equal protection.

Judge Bessen wrote that "the cap so interferes with the determination of the jury that it renders the right of a jury trial wholly unavailable." She opined that it is a jury's right to determine damages, finding that the statutory cap arbitrarily reduces the verdict without consideration of the evidence. She further reasoned that shielding negligent health care providers from liability would only diminish the deterrent effect of tort law. As for the legislature's other objectives – resolution of claims, cost of tort awards, helping insurance providers and medical providers stay in Georgia, and reducing the overall cost of medical malpractice insurance – Judge Bessen stated that there is no evidence to prove these goals are achieved by imposing a damages cap.

During oral argument on the morning of September 15, the bench focused on whether the legislature can require a trial court judge to reduce damages in cases of harm to an individual. The defendant's attorneys argued that the Georgia Constitution and Supreme Court have traditionally given the legislature wide latitude to alter the right to jury trial so long as they do not remove

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it. Other courts around the country that have ruled on this issue have held that noneconomic caps do not violate the right to a jury trial. It was stressed that there is no case law holding that the legislature cannot place limits on damages. The current caps only place upper limits on the unpredictable "pain and suffering" damages that can skyrocket out of control.

The patient's attorneys argued that the cap invaded the exclusive right of the jury to set awards and the trial court to review awards. The appellee distinguished limits on punitive damages, which have been deemed constitutional, by noting that punitive damages are a windfall to an otherwise compensated plaintiff, whereas the noneconomic damages caps prevent full compensation. The appellees argued in their brief that there is no proof of a healthcare "crisis" and the legislature imposed its alleged remedy on the victims themselves.

Proponents of the statute believe that undermining the reform would be a step backwards in access to care in the health industry. Due to threats to caps in individual states, proponents believe that federal health reform should include tort reform. Many doctors say that medical liability caps strike a balance between patients' individual rights and the availability of medical care to the general public. The Medical Association of Georgia has found that since Georgia's statute was enacted in 2005, liability rates and claims filings declined by 18% and 39% respectively. As a result, Georgia has experienced a net gain of 1,000 doctors and increased competition among medical liability insurers. Plaintiffs' trial lawyers, however, argue that the caps come at the patients' expense.

Doctors and tort reform advocates appear optimistic that the caps will survive. Co-counsel for the American Tort Reform Association, which joined organized medicine's brief in *Nestlehutt*, stated that the trend is to uphold these statutes "as a matter of legislative authority to look out for the broader health care ramifications, whereas a jury is looking out for a particular individual."

**Mr. Bring would like to thank Erin Rush who assisted significantly with the preparation of this article. Ms.Rush is a recent graduate of the University of Georgia School of Law and an employee of Arnall Golden Gregory LLP in our healthcare practice. Ms. Rush is not yet admitted to the State Bar of Georgia and is awaiting her bar examination results.*