

E-ALERT

MEDICAL MALPRACTICE DAMAGE CAPS STRUCK DOWN

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Six months after hearing oral arguments in [Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt](#), 2010 WL 1004996 (Ga. Mar. 22, 2010), the Georgia Supreme Court struck down O.C.G.A. § 51-13-1, which had limited damages in medical malpractice cases. The statute, which was originally enacted in 2005 as part of the Georgia Tort Reform Act, capped a plaintiff's non-economic damages in a medical malpractice case to \$350,000.

In [Nestlehutt](#), a jury awarded the plaintiff and her husband \$1,265,000 after a plastic surgeon negligently performed a laser resurfacing and facelift. More than 90 percent of the award, \$1,150,000, was for non-economic damages, which included pain and suffering and other non-pecuniary losses. Under the damages cap, the plaintiff's award would have been reduced by \$800,000 to the statutory limit of \$350,000. The trial court refused to reduce the damages, finding O.C.G.A. § 51-13-1 unconstitutional on several grounds.

On appeal, the Supreme Court agreed with the trial court, and held that the statute violated the right to a trial by jury, guaranteed by Article I, Sec. I, Par. XI (a) of the Georgia Constitution. The Court explained that a party has a constitutional right to a jury trial if the right to a jury existed for the cause of action when the Georgia Constitution was originally adopted in 1789. The Court concluded that medical malpractice suits, albeit not in name, existed in England as early as the Fourteenth Century: a case from 1374 involved a surgeon's treatment of a wounded hand. Therefore, the Court concluded, parties in medical malpractice cases have a constitutional right to a jury trial.

In addition, the Court reiterated that the right to a jury trial includes not only fact finding, but also the amount of damages. The statute's cap of non-economic damages, the Court explained, "nullifies the jury's findings of fact regarding damages and thereby undermines the jury's basic function." The Court rejected the defendant's argument that the caps were constitutional since caps on punitive damages have been deemed constitutional. Unlike compensatory damages that measure the damages suffered by a plaintiff, punitive damages are awarded "solely to punish, penalize, or deter a defendant." The Court distinguished statutes that multiply or add interest to jury awards since those statutes "do not in any way nullify the jury's damages award" but instead "affirm the integrity of the [jury's] award." The opinion does not appear to leave room for the legislature to enact a new statute to limit non-economic damages for medical malpractice claims.

The Court's decision stands in contrast to other recent decisions that have upheld provisions of the Tort Reform Act. For instance, in [Smith v. Salon Baptiste](#), 2010 WL 889557 (Ga. Mar. 15, 2010), the Court upheld O.C.G.A. § 9-11-68, which is commonly known as the Offer of Settlement statute. Also, in [Gliemmo v. Cousineau](#), 2010 WL 889672 (Ga. Mar. 15, 2010), the Court upheld O.C.G.A. § 51-1-29.5(c), which limits malpractice liability for emergency room doctors to instances of gross negligence. In none of these cases, however, was a constitutional jury right found to be violated.

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