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Court Decision Rules Caps on Damages Unconstitutional

Atlanta, Georgia—The Superior Court of Fulton County, Georgia this week declared unconstitutional Georgia's medical malpractice cap on non-economic damages. The decision by Judge Marvin Arrington resulted from a case filed by Plaintiff Cheon Park.

Park, 59, fell from a ladder at his home in late 2006. He was taken to WellStar Douglas Hospital by ambulance with complaints of pain in his neck, shoulder, arm and pelvis. Once at the hospital, doctors treated Park for a dislocated shoulder and then released him that same evening. Upon his discharge, Park could not stand on his own and had to be lifted by hospital staffers and his loved ones into his car. Just a few days later Park, still in pain, was taken to Grady Hospital where X-Rays revealed he had a severely damaged spine. Park is a now a C4 quadriplegic.

"Mr. Park is now a C4 quadriplegic and will be in a wheelchair forever. He, Mrs. Park and their son are trying to piece their lives back together," said Rob Roll, an attorney for Park. "**Before 2005, Mr. Park would not have had to fight for his Constitutional Right to a trial by jury. I'm pleased to say that Judge Arrington penned a decision that upholds our Constitution and The Bill of Rights. The Parks are pleased with the decision today."**

In 2005, the Georgia Legislature passed a sweeping so-called "tort reform" measure. Claims of "jack-pot-justice" and "frivolous lawsuits" flooded the halls of the Gold Dome. In one fell swoop, SB 3 drastically changed the Constitutional Rights of all Georgians. In some aspects SB 3 limited one's Constitutional Rights and in other aspects those Rights were completely eradicated.

The Park Family asked for a ruling on two main components of SB 3—the gross negligence standard and the cap on non-economic, or 'quality of life,' damages. Judge Arrington's decision ruled exclusively on the Constitutionality of caps on damages. In a footnote he indicated that a ruling on the gross negligence standard will follow.

"Judge Arrington's decision addressed several aspects of caps on damages that could not pass Constitutional muster," said Trent Speckhals, an attorney for the Park family. "**His ruling addresses this state's—and this nation's—fundamental value of a citizen's right to seek trial by jury. His commonsense ruling balances the rights of all Georgians, young and old, rich and poor, and restores the guarantees set forth by our Constitution."**

In the decision Judge Arrington examined medical malpractice caps on damages and the plaintiff's claim that it violated the Equal Protection Clause in Georgia's Constitution. Equal Protection essentially states that within a group of like people, it is unconstitutional to treat some of them differently than others. He wrote, **"Persons suffering the exact same personal injuries at the hands of other tortfeasors—including other professionals—are not subject to such caps."** In other words, a person hurt by the negligence of another professional—perhaps in a legal malpractice or in a products liability case—has the ability to recover the entirety of a jury's award of damages, while a person injured by the negligence of a medical professional does not.

And the same can be said for the defendants. Under SB 3 one group of professionals are held to a lower standard of expected conduct than others. Judge Arrington wrote, **"…One category of professional defendants have been singled out for special protection, with the result that their victims have been singled out for special disadvantages and limitations."**

Judge Arrington found the Plaintiff's argument that a cap on damages violates the Constitutional Right to trial by jury to have merit as well. He wrote, **"The court agrees with plaintiffs that a fundamental right is involved in this case if for no other reason that the fact that the jury's authority to award the amount of damages that it concludes to be appropriate for non-economic injury is limited by the caps.**"

Under SB 3, the jury's deliberation regarding the amount of damages to be awarded is pre-empted by a legislatively imposed cap—no matter how severe or catastrophic the case before them is. Historically a jury has had the ability to decide the fate of its peers. Founding Father Thomas Jefferson said, "I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its Constitution." Within the circumstance where the will of the jury is circumvented by the legislative statute enacting a cap on damages, Judge Arrington penned, **"…There is no doubt that the caps go to the core of a party's right to have a jury determine his or her claims…To that extent, the jury's award is a meaningless exercise."**

Another point of contention was the defendant's argument—the very same argument used to hasten the passage of SB 3 in 2005—that caps on damages has become a legislative necessity to maintain a functioning medical community allegedly facing skyrocketing malpractice insurance premiums. Judge Arrington wrote in response to this claim, **"At the outset, the court finds unconvincing the defendants' contention that non-economic damages had to be limited, as they contend, in order to allow the medical profession to function effectively."**

Scare tactics claiming Georgia was losing its doctors—particularly OB/GYNs and other specialists—were at the heart of the debate in 2005. Indeed, the cost of medical malpractice insurance was on the rise. However, the supposed correlation that damages awarded to citizens harmed by the insured doctors and the increasing cost of insurance remains unfounded. Price-gouging by the insurance industry—not litigation—was the cause.

A 2005 study conducted by former Missouri Insurance Commissioner, Jay Angoff, found that the insurance companies have been price-gouging doctors by drastically raising their insurance premiums, even though claims payments have been flat, or, in many cases, decreasing. According to the annual statements of the 15 largest insurance companies, the amount malpractice insurers collected in premiums increased by 120.2% between 2000 and 2004, while their claims payouts rose by only 5.7%.[1]

Furthermore, a 2008 study by researchers at the Harvard School of Public Health and George Mason University has found that the supply of OB/GYNs is unaffected by both medical malpractice insurance premiums and the presence of tort reforms in a state. **"We found that the supply of OB/GYNs had no statistically significant association with premiums or tort reforms. Our results suggest that most OB/GYNs do not respond to liability risk by relocating out of state or discontinuing their practice, and that tort reforms such as caps on noneconomic damages do not help states attract and retain high-risk specialists."** [2]

"The arguments used in 2005 were suspect then—and have been proven to be false now," said Speckhals. **"The spin on statistics used to protect large corporations and the insurance industry has steered us away from reality—the reality of real people, right here in Georgia, who are struggling to regain their lives after they were harmed by someone else's negligence."** Speckhals praised Judge Arrington's ruling as it addressed the economic circumstances faced not by multi-billion dollar corporations but those faced by the families in this state.

Judge Arrington ruled that even if there was a way to make caps on damages constitutional, it had to be done in a way that did not have a largely disparate impact on wealthy individuals compared to poor individuals. **"..The statute effectively puts substantial limitations on the rights of the poor and middle class to recovery while**

leaving the right to virtually unlimited recoveries unimpeded for the wealthy… The limitation on non-economic damages falls, instead, on the poor, the unemployed, the elderly, the homemaker who does not work outside the home, and others with little earnings," wrote Judge Arrington.

Judge Arrington cited another reason why caps on damages are unconstitutional. A person who has a minimal injury may receive complete compensation of economic and non-economic damages because they will total less than the cap. A person, like Mr. Park, who was catastrophically injured by the negligence of another will not have the ability to receive full compensation. Wrote Judge Arrington, **"Someone who is profoundly injured, as the plaintiff here, will receive, if he prevails, compensation for only a small percentage of his actual non-economic injury."**

"It always breaks my heart when I hear of families like the Parks who are the victims of someone else's negligent conduct and they are unable to seek justice because our the law passed in 2005 [SB 3] **prohibits them from doing so,"** said Fred Orr, President of the Georgia Trial Lawyers Association. "**The ruling shines a light on the challenges that real people in this state face when they are harmed by acts of negligence. To eradicate a certain class of people's rights is not only immoral, it's unjust, and Judge Arrington recognized this.**

"I expect this decision to be appealed and that the discussion surrounding this important issue will continue," stated Orr. **"Judge Arrington obviously put a tremendous amount of scholarship and research into his decision. And I hope the coming discussions and debates surrounding this case will continue with the same levels of respect for our Constitution and for the families who live with the consequences of negligent acts by others."**

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1. "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry," Jay Angoff, 7/05, http://www.centerjd.org/ANGOFFReport.pdf.
2. "A Longitudinal Analysis of the Impact of Liability Pressure on the Supply of Obstetrician-Gynecologists," Y. Tony Yang, David M. Studdert, S. V. Subramanian, and Michelle M. Mello, *Journal of Empirical Legal Studies*, Volume 5, Issue 1, 21–53, March 2008