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LEGAL ALERT

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Supreme Court of Georgia Addresses the Constitutionality of Key Provisions of the Georgia Tort Reform Act of 2005

Recently, the Supreme Court of Georgia issued three opinions on the constitutionality of key provisions of the Georgia Tort Reform Act of 2005. In separate cases, the Court upheld the constitutionality of a "gross negligence" standard of care for malpractice claims against emergency health care providers, upheld the offer of judgment and offer of settlement statute, but declared unconstitutional the $350,000 cap on noneconomic damages in medical malpractice cases. These decisions will have a significant impact on medical malpractice cases, although the offer of settlement statute applies to tort claims generally, not just medical malpractice cases. The Court's decisions are described in further detail below.

"Gross negligence" standard upheld for malpractice claims against emergency care providers

In *Gliemmo v. Cousineau*, the Court upheld the constitutionality of O.C.G.A. § 51-1-29.5, which creates a "gross negligence" standard of liability for emergency care providers and requires proof by clear and convincing evidence. The challengers contended that § 51-1-29.5 is a "special law" in violation of the uniformity clause of the Georgia Constitution. *Gliemmo v. Cousineau*, ___ S.E.2d ___, 2010 WL 889672 (Ga. 2010). In rejecting the challenge, the Court reasoned that the statute is not a "special law" because it affects more than "a limited activity in a limited specific industry during a limited time frame." Instead, O.C.G.A. § 51-1-29.5 creates a "general law," which is broad in scope and applies generally to all health care liability actions throughout the state that arise out of emergency medical care, and the classification it creates is not arbitrary or unreasonable.

Similarly, the *Cousineau* court found that O.C.G.A. § 51-1.29.5 does not violate the Equal Protection Clause. The Court reasoned that, because raising the burden of proof does not deny plaintiffs their right to a jury trial or implicate any other fundamental right, the statute need only bear a reasonable relationship to a legitimate state purpose. The Court identified such a purpose in the legislature's stated goal of "promot[ing] affordable liability insurance for health care providers and hospitals, thereby promoting the availability of quality health care services." The Court found the classification created in the statute is reasonably related to that purpose.

Finally, the Court held that the statute's failure to define "gross negligence" did not render it unconstitutionally vague because the phrase has a commonly understood meaning.

The offer of judgment/offer of settlement statute is constitutional

In *Smith v. Baptiste*, ___ S.E.2d ___, 2010 WL 889557 (Ga. 2010), the Court upheld Georgia's offer of judgment or settlement statute, O.C.G.A. § 9-11-68. This statute, which applies to tort claims generally, not just medical malpractice claims, authorizes the shifting of attorneys' fees and court costs if a party rejects a qualifying offer of judgment or settlement that was more favorable by a certain percentage than the ultimate result obtained by the rejecting party. Unlike the federal offer of judgment provision, Fed. R. Civ. P. 68, the Georgia statute permits the shifting of attorneys' fees, not just court costs. The Supreme Court previously had held that it would be unconstitutional to apply this statute retroactively to cases that were filed before the statute's effective date. But in *Smith v. Baptiste*, the Court held that the offer of judgment or settlement statute was constitutional when applied prospectively. In so doing, the Court

rejected the argument that this fee-shifting statute violated the Georgia Constitution's "right of access to the courts," rejected the argument that it was a special law in violation of the uniformity clause, and noted that the law is a legitimate method of furthering the state's "strong public policy of encouraging negotiations and settlements."

Cap on noneconomic damages in medical malpractice claims invalidated

In *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, ___ S.E.2d ___, 2010 WL 1004996 (Ga. 2010), the Court struck down OCGA § 51-13-1, which imposed a $350,000 cap on noneconomic damages in medical malpractice cases.[1] The Court first concluded that a common law right to a jury trial for claims involving the medical negligence of health care providers existed at the time the state adopted the 1798 Constitution. The Court went on to find that inherent in the right to a trial by jury is the right to have the jury determine the amount of damages. The Court recognized that noneconomic damages have long been considered an element of damages in tort cases. Because the Tort Reform Act's cap on noneconomic damages interfered with the right to a jury determination of the amount of damages, it unconstitutionally infringed the right to a trial by jury.

The Court's decision does not implicate statutory caps on punitive damages. The Court rejected arguments that the cap on noneconomic damages was analogous to statutory limits on punitive damages and the power of judicial remittitur, both of which the Court had previously upheld. The Court found that punitive damages are awarded as punishment to deter defendants and are not measures of actual damages factually determined by a jury. The Court held that the power of judicial remittitur, which allows judges to reduce damages awards that are clearly excessive, is a corollary of the courts' constitutional power to grant new trials and is constitutional "precisely because it does not confer on the courts the unfettered authority to alter jury verdicts."

Finally, the Court held that this decision applies retroactively to all pending cases.

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If you have any questions regarding this alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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[1] Other courts have also invalidated caps on noneconomic damages recently. *See Lebron v. Gottlieb Memorial Hospital*, ___ N.E.2d ___, 2010 WL 375190 (Ill. 2010) (caps violated separation of powers clause of state constitution); *Ferndon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund*, 701 N.W.2d 440 (Wis. 2005) (caps violated state's equal protection clause). The *Nestlehutt* court did note that other courts have upheld caps on noneconomic damages, but it concluded that those states had either less comprehensive constitutional jury trial provisions or employed unpersuasive reasoning.