

Last week, [the Supreme Court of Georgia](#) declared that a recently-enacted state law capping noneconomic damages violated the right to jury trial bestowed by the Georgia Constitution. [The Atlanta Journal Constitution](#) covered the decision in this article called, 'State high court overturns state's tort reform'. In 2005, the Georgia legislature capped noneconomic damages in medical malpractice cases as part of a 'tort reform' effort. Under Georgia law, noneconomic damages are 'damages for physical and emotional pain, discomfort, anxiety, hardship, distress, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, injury to reputation, and all other nonpecuniary losses of any kind or nature.' This definition is similar to the law of other states in the nation, including North Carolina.

In the underlying case that resulted in this court decision, the plaintiff was permanently disfigured in the course of a facial surgery. A jury of the injured woman's peers, who were able to review the evidence and see first-hand how this woman had suffered from being disfigured, determined what her noneconomic damages were. The \$900,000 noneconomic damages amount exceeded the \$350,000 cap. If the cap were upheld, the injured woman would be arbitrarily deprived of the full measure of what a jury of her peers determined was appropriate. No one can honestly second-guess this woman's peers, who witnessed first hand the horrors this woman suffered and will continue to suffer for the rest of her life.

The Supreme Court found that this cap violated the state constitution's guarantee that a jury shall determine whether a person has been harmed and the extent of that person's injuries. The Georgia Constitution states that **'[t]he right to trial by jury shall remain inviolate.'** Our North Carolina Constitution goes even further, calling the right to trial by jury **'sacred and inviolable.'** These state constitutional rights echo the Seventh Amendment of the United States Constitution, which declares that **'the right to trial shall be preserved, and no fact tried by a jury, shall be re-examined in any Court of the United States, than according to the rules of common law.'**

We applaud the Georgia Supreme Court's courageous defense of constitutional rights, joining other states that have struck down arbitrary damages caps. In other entries on our blog, we discuss how these caps and other 'tort reform' often is simply a tool to protect the profits of politically powerful businesses rather than doing anything meaningful about healthcare costs or health insurance premiums.

