

Jan. 17, 2020: Judicial Advocacy Update

Top court turns down bid for damages-only medical liability retrial

A recent ruling from the Supreme Court of Georgia that rejected Shaw G. Evans' request for a damages-only retrial is a relief to physicians who told the state's high court that retrial only focused on the damages would open up physicians and hospitals to increased liability. Evans sought a retrial on damages because he believes the dollar amount awarded was too low.

"Allowing a separate jury to hear a damages-only trial has been proven to lead to excessive damages and injustice," the Litigation Center of the American Medical Association and State Medical Societies and the Medical Association of Georgia tell the court in an amicus brief they filed jointly in the case, *Evans v. Rockdale Hospital*. "A concern courts have identified with partial retrials is the prejudice to the parties that can result from the evidentiary decisions made in the retrial. Often the second jury cannot set damages without an understanding of the underlying breach."

The Georgia ruling didn't directly address Evans' request for a damages-only retrial. Instead, the court vacated the Court of Appeals of Georgia ruling that concluded that the jury award "shocked the conscience" by not awarding damages for pain and suffering and that Evans was entitled to a retrial that determined both liability and damages.

The high court ruling, aligning with the Litigation Center brief, says the lower court "could not substitute its judgment for that of the trial court on the fact-based question of whether the damages awarded were within the range authorized by a preponderance of the evidence." Justices on the high court wrote that "the Court of Appeals instead should have limited its review to whether the trial court, who saw the witnesses and heard the testimony, abused its discretion in denying the motion for a new trial."

Read more here.

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