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High court upholds damages

A jury's award of \$1.37 million against Oregon Medical Group will stand

BY JACK MORAN

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The Oregon Supreme Court on Thursday upheld a Lane County jury's decision to award \$1.375 million in noneconomic damages to a family that won a malpractice judgment against Eugene-based Oregon Medical Group in connection with a permanent injury suffered by a baby when his mother gave birth to him in 2004.

The ruling reversed a state Court of Appeals decision that had limited the amount of damages in the case to \$500,000 — the maximum amount a plaintiff in a personal injury lawsuit is allowed to receive under a state law passed in 1987.

But the state Supreme Court held that that law does not apply to the case involving Braedon Klutschkowski because his injury happened as a result of medical negligence while he was being delivered, and not prior to birth. The \$500,000 cap generally applies

to prenatal injuries.

Braedon suffered nerve injuries to his right arm when a doctor pulled him from the birth canal after his shoulder had become stuck behind his mother's pubic bone during a vaginal delivery, according to court records.

The boy's parents, Bobbi and Kevin Klutschkowski, subsequently sued Oregon Medical Group, PeaceHealth, OMG obstetrician Amy McCarthy and Center for Women's Health, and OMG obstetrician Zena Monji. Before trial in Lane County Circuit Court, the family dropped the claims against all the defendants except OMG. A Lane County jury later sided with the family and against OMG, and awarded the family \$557,881 in economic damages and \$1.375 million for pain and suffering.

Doctors had failed to inform Bobbi Klutschkowski of risk factors that increased the likelihood of complications if Braedon were delivered vaginally, Supreme Court Justice Rives Kistler noted in an opinion issued Thursday.

The risk factors included the baby's large fetal size and the fact that the mother had complications in the birth of a previous child, when that child's shoulder became stuck during delivery.

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