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# Lane County family owed full damages at delivery malpractice case, state high court

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A baby who sustained nerve injuries as a result of negligence by a Lane County medical practice should be able to collect the full \$1.375 million in noneconomic damages awarded by a jury in 2008, the **Oregon Supreme Court said Thursday** (<http://www.publications.ojd.state.or.us/docs/S059869.pdf>).

The decision found that a 1987 state law capping civil damages for pain and suffering at \$500,000 should not apply to the case involving Braedon Klutschkowski, whose right arm was "substantially impaired" by complications during his 2004 birth via vaginal delivery. A jury had also awarded the Springfield family economic damages of \$557,881 after finding Oregon Medical Group liable for negligence.

The lawyer for the Klutschkowski family lauded the decision.

"It means that Braedon gets adequately compensated for this injury and gets what the jury decided was adequate compensation," said Portland attorney Kathryn Clarke, noting that Braedon is now 9 1/2 years old. "I'm absolutely thrilled."


Although the court has said medical malpractice claims generally are not subject to the cap, prenatal injuries to a fetus have been an exception, based on common law dating to 1857, when Oregon's Constitution was ratified.

But the opinion, written by Justice Rives Kistler, found that Braedon's case did not qualify as a prenatal injury. In Braedon's situation, doctors at Oregon Medical Group failed to inform Braedon's mother, Bobbi, of risk factors that greatly increased the probability that Braedon would get stuck and sustain nerve damage if he were delivered vaginally, according to the court's account of the case. Doctors failed to propose that she instead deliver via Cesarean section, the opinion states.

Braedon's shoulder became stuck during delivery, and he was diagnosed with a permanent, disabling brachial plexus injury.

The court's opinion in the case reverses the **2011 Court of Appeals decision** (<http://www.publications.ojd.state.or.us/docs/A138722.pdf>) that allowed the verdict to be capped.

-- **Helen Jung** (<mailto:hjung@news.oregonian.com>)



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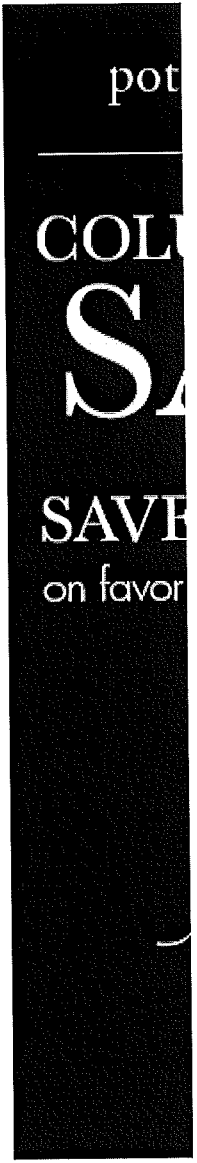
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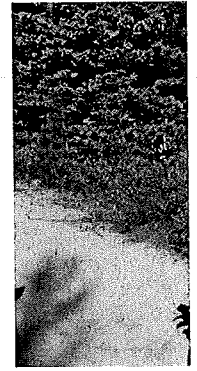


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