

## Judge Cuts \$47.6M Off Verdict

A judge has knocked \$47.6 million off a \$73 million verdict by enforcing Georgia's \$250,000 cap on punitive damages.

Fulton County State Court Judge Eric Richardson ruled from the bench Tuesday afternoon following a hearing on a motion from defense attorneys for companies that own and manage an apartment complex hit with a \$73 million verdict on Jan. 15. The jury awarded \$17.9 million in damages to compensate the plaintiff for severe burns from a gas explosion in his apartment. Then the jury added \$7 million in attorney fees and \$47.9 million in punitive damages. The judge Tuesday enforced the cap, dropping the punitive damages portion down from \$47.9 million to \$250,000.

The judge ruled in favor of "the presumption of constitutionality of statutes," said **Richard Robbins of Robbins Ross Alloy Belinfante Littlefield**, who serves as outside counsel to one of the defendants, WSE, the management company for the apartment complex owned by Aslan Commons.

"I felt there was a 99 percent chance" that the judge would bump the punitive damages down to the cap, said Robbins, who was present to monitor the hearing for his client. "The standard procedure is it goes to the jury. If it exceeds \$250,000, it will be written down if there is no specific intent to cause harm."

Plaintiff's attorneys had argued that the cap is unconstitutional. "We disagree with the ruling, but he explained himself well," said Michael Terry of Bondurant Mixson & Elmore. Terry added he "understood why the judge deferred to the General Assembly," which passed the cap in 1987. Terry, an appellate lawyer, said "guidance is needed" from the Georgia Supreme Court.

Terry has been hired to handle the appeal of the cap by Peter Law and E. Michael Moran of Law & Moran, attorneys for the plaintiff, Stephen Wells. Law and Moran asked at trial for punitive damages "without limitation or cap" because they said the defendants "showed willful misconduct, malice, fraud, wantonness and oppression" by allowing the hazard of an uncapped gas line in the apartment, as the lawsuit states. But defense attorneys Y. Kevin Williams and J. Tyler Schermerhorn of Weinberg, Wheeler, Hudgins, Gunn & Dial disagreed.

"This was a tragic accident, but here was no intent to cause harm," said Robbins. Robbins said that courts typically allow a jury to reach a verdict without giving instructions about the cap in order to prevent influencing the verdict, then come back later and enforce the cap "in the absence of intent."

Robbins said defendants hope they can reach a settlement with the plaintiff. Meanwhile, they intend to file motions for a new trial and for judgment notwithstanding the verdict. "It's an interesting case if it goes the distance," Robbins said. "It's fair to say that both sides would like to resolve it."

The plaintiff's attorneys said they plan to launch their appeal of the punitive damages cap immediately. "Judge Richardson did an excellent job and was compelled to follow the law as it exists," said Law. "We'll take it to the Supreme Court. It's time for that law to be changed, and this is the case to do it."

Wells was severely burned shortly after noon on May 29, 2010, when he opened the door of his Sandy Springs apartment. He heard the hiss of an open gas line, then a loud boom. The explosion engulfed him in a ball of fire, blowing him into a hallway. He testified that he ran outside in flames and fell on the grass crying for help. Neighbors who rushed to him said the boom shook the whole building.

Wells was treated at Grady Memorial Hospital's burn unit. His medical bills alone ran \$226,000. His physical and emotional scars will be with him "forever," as Law put it. He had to give up his career as a teacher because it was too demanding after he was hurt. Wells took a job in the building department of a Lowe's home improvement store to support himself.

The tragedy "could have been worse," Law told the jury. The fire marshal testified to inspecting all 620 units in the Edgewater complex afterward and finding 59 with the same code violation of an uncapped gas line no longer being used as intended for a dryer. Because of what happened to Wells, the others were repaired without incident.

The plaintiff's team advanced the theory that a maintenance man who entered the apartment as Wells was leaving must have inadvertently turned on the gas line while attempting to repair another problem with the hot water heater. But even turning on the gas line by accident wouldn't have caused the explosion if the line had been properly capped. And the shutoff valve should have been within sight of the end cap, as code requires, instead of in another room.

The case is Wells v. Aslan, No. 12EV014728F.