



July 22, 2009

## Estate of late vet gets \$749,000 over surgery

JACKSON (AP) — A federal judge has awarded \$749,000 to the estate of a World War II veteran who lost much of his vision during surgery at the Veterans Administration medical facility in Jackson.

U.S. District Judge Tom Lee said in a footnote to Monday's 18-page ruling that he was inclined to award more money for Charles West's suffering, "which clearly has been extreme," but was limited by Mississippi's pain-and-suffering cap in such lawsuits.

West, who owned a grocery store in Greenville before moving to Brandon after his wife died, claimed in his suit that he suffered damage to the corneas of both eyes during a blepharoplasty, a procedure to remove sagging skin between the eyebrow and the eye lid.

West's injury most likely occurred when a nurse used an undiluted Betadine solution or scrub during preparation for his surgery on March 10, 2006, Lee said.

"After the malpractice, the VA called Mr. West, his 83-year-old sister and his niece into a meeting and told them he had an allergic reaction. They lied to him," West's attorney, Billy Quin, said Wednesday. "If they just would have said this, 'We messed up, but we're going to take care of you' and then followed through and taken care of him there probably never would have been a lawsuit."

An attorney for the VA did not respond to messages left by The Associated Press.

The VA disputed the cause and severity of West's injuries in court records.

West died May 8 at the age of 91, after the trial but before the court's ruling. The money, if Lee's ruling stands, would go to his estate.

According to court records, West decided to have the operation after consulting Dr. Daniel K. Kim, an ophthalmology surgeon at the VA, because the sagging skin was a nuisance and removing it could improve his peripheral vision and quality of life.

"Unfortunately, however, during the procedure, Mr. West suffered chemical burns to his corneas, which caused severe vision loss in both of his eyes," Lee wrote. "As a result of his loss of vision, Mr. West became dependent on others for his care."

Kim did not immediately respond Wednesday to a message.

Lee awarded actual damages of about \$249,000 and the maximum \$500,000 allowed for so-called non-economic damages, or pain and suffering, under a cap adopted by Mississippi lawmakers for medical malpractice cases in 2002.

“In fact, but for the statutory cap, the court, taking into account future non-economic damages, would have been inclined to award more than \$500,000,” Lee wrote.

The cap on pain and suffering was adopted after years of contentious wrangling over tort reform in Mississippi. Doctors, businesses and medical groups had argued that the legal climate in Mississippi was untenable due to excessive awards in civil lawsuits. Plaintiffs attorneys and others claimed caps on damages further victimized people who had been wronged by negligence and denied them compensation they deserved.

---

Meridian Star 814 22nd Avenue Meridian, MS 39302