

SHIRLEY'S STORY

A real case demonstrating
the unfairness of damage caps.

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In 1997, Shirley was a 44-year-old hard-working, stay-at-home, loving mother of four children, ages 19, 17, 12 and 9. Her world revolved around her children. An accomplished seamstress, she sewed many of their outfits. She delighted in making fancy clothes for special events. She was also the Girl Scout troop leader, holding meetings for the troop in her home, always accompanied by homemade treats. She took her kids and children of her neighbors on long walks and played with them at the local playground. She babysat many of the neighborhood children during the day when their parents went to work. Shirley took care of every child around her, mothering all of them, and doing all that she could for them.

When her gynecologist discovered Stage 1 cervical cancer during a routine Pap smear, Shirley wasn't worried. She knew that it had been caught as early as it could be and that she would be cured once she had a hysterectomy. Ten days before Christmas in 1997, she entered a hospital in Philadelphia and had a hysterectomy, lymph node dissection (to make sure that the cancer hadn't spread) and another abdominal surgical procedure. The operative record stated that everything had gone well, that there had been no complications, and that all items used during the surgery had been accounted for. Shirley went home and enjoyed Christmas with her family.

All went well for Shirley and her children until early April, 1998, when Shirley was rushed to the emergency room, complaining that her legs had collapsed under her, and she could not feel her feet. Shirley underwent testing to find out what was wrong with her. One test, designed to determine if her nerves were working properly, showed that spinal nerves in the area of her lower back were not functioning. Further radiological imaging scans revealed a large mass in her retroperitoneal cavity, the space where her prior surgeries had taken place. The mass was 9 cm x 6 cm.

Shirley underwent surgery a few weeks later. During this surgery a sponge that had been used in her December surgery was removed from her retroperitoneal cavity. Unfortunately, permanent damage had already been done. Shirley's body had tried to protect itself from the foreign substance – the sponge. In doing so, it walled off the sponge in a large mass. This mass compressed Shirley's nerves and resulted in permanent nerve damage.

Shirley, only 44, was now confined to a wheelchair, unable to stand or walk. The nerves that control her bowel and bladder function were also damaged by the retained sponge. At the age of 44, Shirley was now forced to wear diapers every day. She was unable to care for herself, let alone care for her children. When she was discharged from the hospital, she was unable to return to her home because of the level of care that she required. She spent the next 21 months living in a nursing home, away from her children.

Shirley's children were cared for by several members of her family while she was in the nursing home. The older children also pitched in and helped care for their younger siblings. During her time away from her family, Shirley missed a lot. She missed her son's graduation. This was a big event in Shirley's family because her son had struggled with school and had to work really hard to maintain sufficient grades to graduate. Shirley was not able to be present to see her son's proudest moment. She also could not see him get ready for his prom. He had wanted her to sew the dress that his girlfriend would wear to the prom, along with a matching cummerbund for him. Shirley couldn't. She also could not be the troop leader for her younger daughter's girl scout troop, and she missed holiday performances and school plays for her two youngest children.

Shirley didn't just miss out on the special events in her children's lives. She missed caring for them every day, cooking their meals, helping them pick out outfits for school, laughing with them about the events of the day, comforting them when things were difficult. She missed spontaneous hugs, the sweet sounds of their giggles, tucking them in at night or at least looking in on them to see her children sleeping peacefully. Shirley missed being a mother to her children.

When Shirley moved back home, she hoped to be able to care for her family again. Unfortunately, her greatest wish was not granted. Because of Shirley's continuing inability to care for her own needs, she certainly did not have the ability to care for her children. Her two youngest children went to live with their father, from whom Shirley was separated. Her two oldest left the house to pursue their own dreams.

Shirley lives alone now, with daily visits from a nurse who helps her care for herself. Shirley still cannot walk or even stand. She is confined to a wheelchair for the rest of her life. She still must wear diapers every day. She is still unable to be a mother to her own children, and she cannot mother the neighborhood children. Shirley's greatest talent and gift – her ability to love and care for children, her ability to be a mother in the best sense of that word – sits unused, unable to be shared.

Shirley was never a wage earner. Her ability to recover for the negligence of the doctor, who failed to remove the sponge, and the hospital employees who failed to keep an accurate count of the sponges used, is limited to non-economic damages. Is \$250,000 fair for the next 33.9 years of her life in a wheelchair? Does \$250,000 fully compensate Shirley for the next 33.9 years that she will spend in diapers? Can \$250,000 ever compensate Shirley for the loss of her ability to be a mother to her children – which was her joy in life – or for the loss of her own independence? And what about the losses that Shirley's children have suffered?

Shirley's actions didn't cause her disability. A medical mistake did. Why should the medical malpractice insurance crisis be solved at Shirley's expense? Doesn't she suffer enough every day?

Shirley



