



Alerts

Illinois Supreme Court Reverses Holding on Forfeited Setoff Claim in *Thorton v. Garcini*

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Medical Litigation Alert

On October 29, 2009, the Illinois Supreme Court held in *Thorton v. Garcini*, No. 107028 (Ill. Oct. 29, 2009), a medical negligence action, that defendant physician forfeited any setoff from a settlement by his former codefendant, a hospital, because he only first raised the issue in a post-judgment motion. The Court recently reversed this holding on rehearing.

In reversing, the Court held that there are two categories of setoffs, which are treated differently. The first is when a defendant claims that the plaintiff has done something that would reduce damages. This type of setoff claim must be raised in the pleadings. The second category is where the defendant seeks to reduce the damage award because a third party has compensated plaintiff for the same injury, such as when a codefendant otherwise liable for contribution settles with the plaintiff. The Court held that the second type of setoff claim may be raised at any time. Because the setoff in *Thorton* fell within that second category, the Court reversed its original decision that defendant's setoff claim based on a co-defendant's settlement was forfeited because it had not been raised in the pleadings.

For further information, please contact [Dawn A. Sallerson](#) or your regular [Hinshaw attorney](#).

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