

Supreme Court Determines Setoffs Should be Subtracted After Reduction of Jury Verdict to the Statutory Cap

July 26, 2012

With the recent ruling by the Michigan Supreme Court, defendants in joint and several liability medical malpractice cases will benefit significantly from how the trial courts apply a setoff owed to a defendant as the result of a settlement paid by a codefendant.

On July 23, the Supreme Court issued an opinion reversing the Michigan Court of Appeals decision in *Velez v Tuma*, 283 Mich App 396 (2009) ruling that settlements must be subtracted from a jury verdict after the application of the noneconomic damages cap.

In the case of *Velez v Tuma*, Myriam Velez filed suit against a variety of defendants alleging a failure to timely operate on her leg, which she claimed resulted in amputation. The hospital defendants entered into a pre-suit settlement with the plaintiff for a total amount of \$195,000. Subsequently, suit was filed against the remaining defendant, Dr. Martin Tuma.

A jury awarded the plaintiff over \$1,524,831. Of this amount, \$124,831 was allocated to economic loss, and the remaining \$1.4 million was awarded for noneconomic losses.

The circuit court applied the collateral source rule and determined the economic damages had been satisfied. Therefore, the only issue remaining was whether the payment made by the settling defendants should be set off against the \$1.4 million jury award or whether the verdict should be reduced to the \$394,000 cap before subtracting the settlement.

The trial court determined that the settlement of \$195,000 should be subtracted from the verdict amount of \$1.4 million. As a result, the plaintiff was entitled to collect \$589,000. Had the verdict been reduced to the cap prior to applying the setoff, the plaintiff's recovery would have been limited to \$394,000, and Dr. Tuma's liability would have been \$199,000.

The appellate court affirmed the trial court's ruling, and the defendant appealed to the Supreme Court.

The Supreme Court granted leave on two issues. The first issue was whether the appellate court correctly held that the setoff amount was properly set off against the jury verdict, before application of the noneconomic damages cap of MCL 600.1483, and was properly calculated in the final judgment.

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Second, the court granted leave on plaintiff's cross appeal on the specific issue of whether *Markley v Oak Health Care*, 255 Mich App 245 (2003) correctly determined that the common law setoff rule applied in medical malpractice cases where joint and several liability is imposed.

The court, addressing the cross-appeal first, ruled that the common law setoff rule does apply in the context of joint and several liability medical malpractice cases. (Note: joint and several liability does not apply where the jury finds the plaintiff comparatively negligent).

The court found that the lower courts had erred by applying the setoff before the noneconomic damages cap, which allowed a plaintiff to recover a total judgment in excess of the statutory cap and "subverted the clear directive of MCL 600.1483." The court, apart from the dissenting Justice Diane Hathaway, rejected the notion that §1483 applies only to jury awards, not settlements.

The majority opinion pointed out that subtracting the total settlement from the final judgment (as opposed to the verdict) would negate the need for the circuit court to allocate the settlement proceeds between economic or noneconomic losses before applying the setoff. The court found that a settlement is to be treated as an aggregate award to be applied against the plaintiff's final judgment.

If you have any questions regarding the Supreme Court reversing *Velez v Tuma*, contact the author of this Rapid Report, your Plunkett Cooney attorney or any member of the firm's Medical Liability Practice Group.

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