



Plank v. Community Hospitals of Indiana, 981 N.E.2d 49 (Ind. 2013)

956 N.E.2d 731 (Ind. Ct.App. 2011)

Topics Covered: Professional Liability, Tort Reform

Outcome: Very Favorable

Issue

The issue in this case was whether the Indiana statutory limitation on damages in medical malpractice suits was constitutional.

AMA Interest

Medical liability is the AMA's highest legislative priority.

Case Summary

Debra Plank was hospitalized for severe abdominal pains. She fell into a coma and, two weeks later, died.

As representative of Mrs. Plank's estate, her widower, Timothy Plank, sued Community Hospitals of Indiana and Joseph Pavlik, MD, for wrongful death based on medical malpractice. He also sued personally, for loss of consortium. Mr. Plank alleged that the hospital had unreasonably delayed the delivery of an x-ray, which showed that Mrs. Plank had a dangerous, but treatable bowel obstruction. Had the x-ray been read promptly, Mrs. Plank could have had emergency surgery, which would have cleared the obstruction.

The jury found Dr. Pavlik not liable, but it awarded Mr. Plank \$8.5 million against the hospital. The Indiana Malpractice Act (IMA) provides that the total amount recoverable in an action for medical malpractice may not exceed \$1.25 million. Based on the IMA, the hospital moved, after entry of judgment based on the verdict, to have the judgment reduced.

Mr. Plank objected to the motion, contending that, even if the IMA damages cap may once have been valid, it is no longer constitutional. He asserted that the Indiana legislature had passed the cap in order to maintain the profitability of physicians and other health care providers, and he sought leave to introduce evidence on the general economic conditions of the health and insurance industries, intending to prove that the cap is no longer needed to ensure affordable and accessible health care.

The trial court denied Mr. Plank's objection and then reduced the judgment against the hospital to \$1.25 million. Mr. Plank appealed the reduced judgment to the Indiana Court of Appeals.

On October 25, 2011, the Court of Appeals reversed. It held that Mr. Plank is entitled to present evidence on whether the cap on damages, even if at one time constitutional, is now invalid because the original conditions that supported the law no longer exist.

Dr. Pavlik appealed to the Indiana Supreme Court. On January 15, 2013, Indiana Supreme Court ruled in favor of Dr. Pavlik on a technicality. It held that Mr. Plank had not properly asserted his claim of unconstitutionality in the trial court, and so it reversed the Court of Appeals and affirmed the trial court.

Litigation Center Involvement

The Litigation Center, along with the Indiana State Medical Association, filed an *amicus curiae* brief in support of the hospital in the Indiana Court of Appeals.

Indiana Court of Appeals brief