



Velez v. Tuma, 492 Mich. 1 (Mich. 2012)

Topics Covered: Professional Liability, Tort Reform

Outcome: Very Favorable

Issue

The issue in this case was how to set off a joint tortfeasor's settlement payment in a medical liability lawsuit, in which the noneconomic damages were to be reduced on account of a statutory cap.

AMA Interest

Medical liability reform is the AMA's highest legislative priority.

Case Summary

Dr. Martin Tuma and two hospitals provided health care services to Myriam Velez. According to Velez, those services fell below accepted professional standards, and as a result she suffered the loss of her leg below the knee. She brought suit for her injury. Prior to the trial, the hospitals settled with Velez for \$195,000.

The case against Tuma was tried and the jury found that Velez was entitled to an award of \$124,831.86 in economic damages and \$1,400,000 in noneconomic damages, for a total of \$1,524,831.86. However, the judge found that the economic damages had been or would be paid by a "collateral source," and under Michigan law they were not recoverable.

In addition, under Michigan law, noneconomic damages in a medical malpractice suit were not to exceed \$394,200. The trial judge then reduced the noneconomic damages, in accordance with the statutory cap. However, although Tuma claimed a set off on account of the hospitals' payment, the trial court refused to reduce the award further. Thus, the final judgment was for \$394,200 based on noneconomic damages only.

Tuma appealed, claiming that he had not been properly credited for the \$195,000 that the hospitals had paid to Velez. He asserted that the \$195,000 should have set off against the reduced award of noneconomic damages. However, the Court of Appeals affirmed.

Tuma appealed to the Michigan Supreme Court. On July 23, 2012, by a split decision, the Supreme Court partially affirmed and partially reversed the decision of the Court of Appeals. The Supreme Court affirmed the holding of the Court of Appeals that the common law right of set off applied to this case, notwithstanding that the proper award of damages was to be determined by Michigan's tort reform law. However, on the principal issue, the manner in which the setoff was to be applied, the Supreme Court reversed. Under the statutory wording, the amount of noneconomic damages Velez could recover was to be limited to \$394,200. If the settlement set off were to be applied before application of the statutory cap, she would receive

more than this sum as noneconomic damages. Therefore, the setoff was to be applied after application of the damages cap, and the correct judgment for Velez should have been \$199,200.

Litigation Center Involvement

The Litigation Center, along with the Michigan State Medical Society filed two *amicus curiae* briefs to support Tuma. The first brief argued that the set off should be made after application of the damage cap, so as not to dilute the benefits to be derived from the cap. The second brief argued that setoff should be made, as provided under Michigan common law.

Michigan Supreme Court brief

Michigan Supreme Court supplemental brief