FIRM HELPS RESTORE MICHIGAN'S MEDICAL LIABILITY TORT REFORM

In December of 2012, the Michigan Legislature passed two bills under the state’s Revised Judicature Act which substantially changed measures affecting the calculation of a civil judgment, certain issues involving the timeliness of filing of the complaint, and strengthened medical malpractice tort reform measures.

Each bill was signed into law by Gov. Rick Snyder in January of 2013 and both apply to causes of action arising on or after April 1, 2013.

The new legislation includes several important points:

1. Reduction of gross future damages to present value is now calculated on a compound (rather than a simple) basis.

2. Absent certain exceptions, a party cannot restart the two-year wrongful death savings statute by obtaining successive personal representatives.

3. The time to file an affidavit of meritorious defense by a medical malpractice defendant runs from the date of service of the plaintiff’s complaint (rather than the date the complaint was filed).

4. Prejudgment interest on costs and attorney fees is no longer allowed in a medical malpractice action.

5. Loss of consortium is specifically defined as “non-economic loss” which is statutorily capped.

This legislation is considered favorable, especially to Michigan physicians and health care professionals. Plunkett Cooney medical liability appellate attorney, Rob Kameneck, provided critical advice and counsel to the Michigan State Medical Society (MSMS) and to The Doctors Company, and he testified in both the House and the Senate on each of these bills.

This was especially noteworthy when the proponents of this legislation, which included MSMS, The Doctors Company, ProAssurance, and the Insurance Institute of Michigan, designated Rob as the sole person who would testify as to final passage of these bills. As noted by MSMS and The Doctors Company, “Rob is well-respected by both sides” and “[h]e carried us over the goal line today.”

Several of these measures will have a dramatic effect in Michigan law. Existing legislation had been interpreted by the Michigan Supreme Court to reduce future damages by five percent per year on a *simple* basis, even when these damages are calculated on a *compound* basis at the time of trial, usually with the aid of expert testimony. The result was a windfall to the judgment plaintiff who would receive far more in present dollars than would be necessary to achieve the future damage award rendered by the jury, with even prudent investment.
With respect to the timing of filing an affidavit of meritorious defense, the existing law would oftentimes require a defendant who had not yet been served with the complaint, and thus did not know of the existence of the lawsuit, to nonetheless file an affidavit of meritorious defense. This is cured by requiring such a filing 91 days after the defendant is served, rather than when the complaint is filed.

On another front, Michigan law allows an additional time in which a wrongful death case can be filed, above and beyond the regular statute of limitations. That period runs from the date letters of authority are issued to a personal representative. The existing statute did not specify that this additional two-year period run from the date letters are issued to the first (rather than any successor personal representative). Wrongful death lawsuits therefore were “resurrected” when the plaintiff estate would simply obtain a successor personal representative, restarting the two-year period.

Finally, the existing law allows prejudgment interest on attorney fees and costs from the time the complaint is filed to the time of the judgment. Although the primary purpose of interest is to compensate a person for the lost value of money, these attorney fees and costs oftentimes have not been sustained, or fully sustained, until the end of the lawsuit. Such prejudgment interest is now disallowed on costs and attorney fees in a medical malpractice action.