



Michigan Statutory Caps Apply to a Failure-to-Stabilize EMTALA Claim

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The U. S. Court of Appeals for the Sixth Circuit recently made a landmark decision that will impact the way plaintiffs file Emergency Medical Treatment and Active Labor Act (EMTALA) claims in the future. In *Smith v. Botsford General Hospital*, (No. 04-1436, rel'd. 08/18/05), 2005 U.S. App LEXIS 17512, the U. S. Court of Appeals for the Sixth Circuit held that as a matter of first impression, Michigan's medical malpractice damages cap would be applicable in a failure-to-stabilize EMTALA claim, and thus would reduce a federal jury's verdict on non-economic damages.

In *Smith*, the personal representative for the estate of the decedent brought an action against the defendant hospital alleging that it violated EMTALA when it failed to stabilize the decedent's condition before transporting him to another hospital. The decedent was a 600-pound man who had fractured his left leg during a rollover car accident. He was transported to the defendant hospital where examining doctors diagnosed him with an open left femur fracture.

The defendant hospital did not have the facility to clear a patient of the decedent's size for surgery, nor did it have a CT scanner or an operating table to appropriately manage his care. On this basis, the hospital staff decided to transport the patient to another hospital. While in route, decedent's condition deteriorated, and he died from extensive blood loss.

The plaintiff then filed a claim in the United States District Court alleging that defendant failed to meet the stabilizing requirements under EMTALA, which obligates a facility to screen and stabilize emergency patients prior to transfer to another medical facility. EMTALA defines "stabilize" as:

. . . with respect to an emergency medical condition . . . to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility.

In support of her claim, the plaintiff argued that the defendant needed to take additional measures to stabilize his progressive blood loss before they transferred him. Following a trial, the jury found in favor of the plaintiff and awarded \$35,000 for economic damages and \$5 million for non-economic damages. The defendant hospital appealed.

On review, the U. S. Court of Appeals for the Sixth Circuit analyzed whether Michigan's statutory cap on non-economic damages, set forth in MCL 600.1483, applied to a federal claim for an EMTALA violation. The court looked to the plain language of the EMTALA civil enforcement provision, which states:

[A]ny individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of [the Act] may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the [s]tate in which the hospital is located...[Emphasis included].

Given EMTALA's incorporation of state law, the court next had to determine whether this incorporation necessarily led to the application of the Michigan malpractice damages cap. The court acknowledged that this was an issue of first impression in the Sixth Circuit, and in turn, it looked to the Fourth Circuit's decision in *Power v. Arlington Hosp. Assoc.*, 42 F.3d 851 (4th Cir. 1994) for guidance. In *Power*, the Fourth Circuit determined that state caps apply when the plaintiff's EMTALA claim would be deemed malpractice under state law.

On this basis, the Smith court looked to the Michigan Supreme Court's decision in *Bryant v. Oakpointe Villa Nursing Ctr*, 471 Mich 411 (2004) and the two-prong test for determining whether a claim sounds in medical malpractice. In *Bryant*, the court held that a claim sounds in medical malpractice if it arises out of the scope of a professional relationship and raises questions of "medical judgment."

The court then concluded that an EMTALA failure-to-stabilize claim would necessarily entail the exercise of medical judgment and could only be understood through the presentation of expert testimony. As a result, Michigan's medical malpractice damages cap applies to a failure-to-stabilize claim under EMTALA and the jury's award of \$5 million in non-economic damages was reduced to \$359,000, the state cap in 2003.

Plunkett & Cooney shareholder Robert G. Kamenec briefed and successfully argued the appellate case on behalf of the defense.