



Cal Supreme Court throws out old common law “release rule”

Hospital must pay large damage award even though the settlement with the defendant physician was found not to be in good faith

The California Supreme Court last month handed a nice win to plaintiffs by repudiating an old common law rule that a settlement with one defendant in an action with multiple tortfeasors automatically releases the other defendants if the settlement is judged not to have been made in good faith.

The ruling came in a medical malpractice case against a doctor and a hospital, with plaintiffs claiming tens of millions of dollars in damages for a boy who suffered brain damage at birth (*Leung v. Verdugo Hills Hospital, CA Supreme Court, DAR p. 11751*). The Court ruled that the common law “release rule” is no longer applicable in California because of an unjust result; in this case, where a brain-damaged child would only be compensated for a fraction of the damages.

The decision came in a very long-running dispute over whether the hospital should have to pay any damages to the plaintiff, Aidan Leung, after the defendant physician settled out for only \$1 million, the doctor’s medical malpractice policy limit. The trial court ruled that the settlement wasn’t made in good faith because it was so low when compared to the doctor’s potential liability at trial.

The hospital went to trial and lost, being found 40 percent liable with \$15 million awarded in economic damages. The hospital appealed and the Appellate court ruled in favor of the hospital based on the common law “release rule.”

When the case reached the Supreme Court, the hospital argued that because the trial court determined the doctor’s settlement was not in good faith, it should be released from paying any damages under the common law rule that says a release of one is a release of all when settlement with one defendant isn’t made in good faith. The hospital also argued that it should only have to pay its proportional liability. The Court rejected both arguments.

Joint and several liability shall apply

The Supreme Court ruled on August 23 that when one defendant settles, but not in good faith, the other defendant must pay the remaining damages under joint and several liability. In its summary, the Court said:

Six days after his birth, plaintiff suffered irreversible brain damage. Through his mother as guardian ad litem, he sued his pediatrician and the hospital in which he was born. Before trial, plaintiff and the pediatrician agreed to a settlement of \$1 million, the limit of the pediatrician’s malpractice policy. At a jury trial, plaintiff was awarded both economic and noneconomic damages. The jury found that the pediatrician was 55 percent at fault, the hospital 40 percent at fault, and the parents 5 percent at fault.

On the hospital’s appeal, a major contention was that under the common law “release rule”, plaintiff’s settlement

with the pediatrician also released the nonsettling hospital from liability for plaintiff’s economic damages. The Court of Appeal reluctantly agreed. It observed that although this court “has criticized the common law release rule,” it “has not abandoned it.” Considering itself bound by principles of stare decisis, the Court of Appeal then applied the common law release rule to this case, and it reversed that portion of the trial court’s judgment awarding plaintiff economic damages against the hospital. We granted plaintiff’s petition for review, which asked us, as the Court of Appeal did in its opinion, to repudiate the common law release rule. Today we do so.

Writing for the Court, Justice Joyce L. Kennard wrote that acceptance of the hospital’s arguments “would require us to recognize a new exception to our established rule of joint and several liability.” Kennard wrote that it would also limit the amount of damages plaintiffs could recover and “encourage settlements not made in good faith.” If a defendant faced only proportional liability, reasoned Kennard, non-settling defendants would have little incentive to pursue claims against settling defendants such as the doctor. With this ruling, the hospital can now sue the doctor in an effort to recover some of the damages the hospital must pay.

Offer to settle \$2.1 million

The plaintiff was represented at trial by Luan Phan, who said that before the



trial he offered to settle with the hospital for \$2.1 million, which it rejected.

Background

The plaintiff was born March 24, 2003 at defendant Hospital. He was born at less than 38 weeks gestation. On the day of his birth, his mother tried to breastfeed him but could not tell if he was taking milk, and she told this to her nurses. The defendant pediatrician ex-

amined the infant the next day at the hospital and told the parents that he was healthy, and not to worry about the bruises on the side of his head. On March 27, the boy appeared jaundiced and the parents contacted the doctor. They were again reassured that he would be fine, and told to bring him in as scheduled the following week. By March 30 the boy's condition had deteriorated and when the parents called

the doctor they spoke to an on-call pediatrician who instructed them to take him to the ER immediately, where he was given a transfusion, but by that time it was too late; he had already developed kernicterus, resulting in severe brain damage. At present, the boy can't walk or talk, and plaintiff's experts have testified that this outcome could have been prevented with timely treatment.