

SUPREME COURT OF NEW JERSEY

Todd B. Glassman, as Executor of the Estate of Jennifer K. Collum-Glassman, deceased, v. Steven P. Friedel, M.D., Charles W. Farrell, M.D., Lon Weiner, M.D., Natacha Field, R.N., Tanya Gooden, R.N., Constance MacKay, R.N., Anuradha Thalasila, M.D., and Hackensack Meridian Health d/b/a Riverview Medical Center

Glassman v. Friedel · No. A-48/49/50/51, September Term 2020; 085273 · Decided December 23, 2021

SUMMARY

The New Jersey Supreme Court addressed how damages should be allocated when a plaintiff sues successive tortfeasors and settles with the initial tortfeasors before trial. The Court overruled the pro tanto settlement-credit approach from *Ciluffo v. Middlesex General Hospital* and held that damages should be apportioned between the successive causative events, followed by allocation of fault among the non-settling defendants. The Court affirmed the Appellate Division as modified.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Patterson; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Fernandez-Vina; Justice Solomon; Justice Pierre-Louis
JURISDICTION	New Jersey
DECIDED	December 23, 2021
DOCKET	A-48/49/50/51, September Term 2020; 085273
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Medical Defendants appealed by leave from the Appellate Division's interlocutory ruling reversing the trial court's application of a pro tanto settlement credit under <i>Ciluffo</i> . The Supreme Court affirmed as modified and remanded for further proceedings.
STANDARD OF REVIEW	De novo review of the legal issue concerning the proper allocation of damages and the effect of a pretrial settlement in a successive-tortfeasor case.
PRECEDENTIAL VALUE	published; precedential opinion of the Supreme Court of New Jersey

PARTIES

Steven P. Friedel, M.D., Charles W. Farrell, M.D., Lon Weiner, M.D., Natacha Field, R.N., Tanya Gooden, R.N., Constance MacKay, R.N., Anuradha Thalasila, M.D., Hackensack Meridian Health d/b/a Riverview Medical Center v. Todd B. Glassman, as Executor of the Estate of Jennifer K. Collum-Glassman, deceased

TOPICS

medical malpractice wrongful death damages statutory interpretation appellate procedure

PRACTICE AREAS

medical malpractice wrongful death torts damages appellate procedure

QUESTIONS PRESENTED

1. Whether a pro tanto credit based on the amount of a plaintiff's settlement with an initial tortfeasor applies against non-settling successive tortfeasors.
2. Whether the Comparative Negligence Act's fault-based allocation principles govern the apportionment of damages in a successive-tortfeasor case.
3. What procedure a trial court should use to allocate damages when a plaintiff settles with the initial tortfeasors before trial.

HOLDINGS

1. The pro tanto credit awarded under *Ciluffo* is incompatible with New Jersey's current statutory allocation-of-fault scheme and is no longer valid. *Ciluffo* is overruled.
2. In a successive-tortfeasor case involving divisible damages, the jury must first apportion damages between the initial and subsequent causative events, and the damages attributed to the initial event are excluded from the judgment against the non-settling defendants.
3. After apportioning damages between causative events, the trial court must instruct the jury to allocate fault among the non-settling defendants responsible for the second causative event and mold the judgment according to those percentages under N.J.S.A. 2A:15-5.2.

KEY QUOTATIONS

"We thus agree with the Appellate Division that that the pro tanto credit for non-settling defendants in successive-tortfeasor cases is incompatible with our statutory allocation-of-fault scheme and our case law as it has developed in the four decades since Ciluffo was decided." (33)

"We overrule Ciluffo." (34)

"As the Appellate Division observed, the process "is fair and wholly consonant with the developments in our law since Ciluffo was decided."" (38)

FACTUAL BACKGROUND

Jennifer Collum-Glassman tripped and fell while leaving a restaurant, sustaining a severe ankle fracture. After surgery and treatment by the Medical Defendants, she suffered a pulmonary embolism and died; the autopsy attributed the embolism to immobilization following the fracture. Her executor alleged that the property defendants caused the initial accident and that the Medical Defendants' malpractice caused or contributed to the later harm. The plaintiff settled with the Property Defendants for \$1,150,000 before trial.

PROCEDURAL HISTORY

Glassman filed wrongful-death and survival claims against the restaurant property defendants and later added medical-malpractice claims against the Medical Defendants. After settling with the Property Defendants for \$1,150,000, the plaintiff faced a trial-court order applying a pro tanto credit based on that settlement. The Appellate Division reversed and directed allocation of damages between the initial accident and alleged medical malpractice. The Supreme Court granted leave to appeal, overruled Ciluffo, modified the allocation procedure, and remanded.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The matter is remanded to the trial court for further proceedings consistent with the opinion. If the damages are divisible, the jury must determine damages attributable to the initial causative event and the second causative event, without disclosure of the settlement amount; the damages attributed to the initial event must be excluded from the judgment against the Medical Defendants. The jury must then allocate fault among liable non-settling defendants responsible for the second event, and the court must mold the judgment accordingly.

CASES CITED

- Ciluffo v. Middlesex General Hospital, 146 N.J. Super. 476, 481-83 (App. Div. 1977)
- Campione v. Soden, 150 N.J. 163, 184-85 (1997)
- Young v. Latta, 123 N.J. 584, 588-97 (1991)
- Daily v. Somberg, 28 N.J. 372, 384 (1958)
- Knutsen v. Brown, 96 N.J. Super. 229, 235 (App. Div. 1967)
- Town of Kearny v. Brandt, 214 N.J. 76, 97-104 (2013)
- Erny v. Estate of Merola, 171 N.J. 86, 99 (2002)
- Jones v. Morey's Pier, Inc., 230 N.J. 142, 160-62 (2017)
- Rowe v. Bell & Gossett Co., 239 N.J. 531, 552-56 (2019)
- Krzykalski v. Tindall, 232 N.J. 525, 535-36 (2018)
- Crispin v. Volkswagenwerk AG, 248 N.J. Super. 540, 570 (App. Div. 1991)
- Bhagat v. Bhagat, 217 N.J. 22, 36 (2014)
- McCurrie v. Town of Kearny, 174 N.J. 523, 533 (2002)

