



THE SUPREME COURT HAS SPOKEN: NO ALLOCATIONS OF NON-ECONOMIC DAMAGES UNDER MICRA ABSENT A SHOWING OF COMPARATIVE FAULT

© Erik S. Laakkonen
Attorney, Kramer, deBoer & Keane, LLP

The Supreme Court of California has spoken again on issues affecting the Medical Injury Compensation Reform Act ("MICRA"). In the recent case of *Rashidi v. Moser*,¹ the Court held that a non-settling healthcare provider defendant cannot offset a jury's award of non-economic damages, reduced by the court to \$250,000 under MICRA, with pretrial settlement amounts attributable to non-economic damages, when the defendant fails at trial to establish the comparative fault of the settling defendant.

California Civil Code section 3333.2, a MICRA provision, limits non-economic damages to \$250,000 in medical malpractice lawsuits against healthcare providers. The Supreme Court found in *Rashidi* that neither the text nor the history of section 3333.2 demonstrated an intent to allow a medical malpractice defendant to obtain an offset against damages for which he was solely liable.

The Supreme Court further explained that the limitation on non-economic damages was relevant to pretrial settlements only insofar as it provides a "firm ceiling on potential liability as a basis for negotiation. Only noneconomic damages awarded in court are actually capped." Therefore, to use pretrial settlement amounts attributable to non-economic damages as an offset, the judgment at trial must include a finding of apportionment of fault of the settling defendants.

The facts of *Rashidi* involved a twenty-six-year-old plaintiff who lost his sight after a procedure performed by Dr. Franklin Moser. Prior to trial, co-defendants Cedars Sinai Medical Center and Biosphere Medical, Inc. settled with plaintiff for \$350,000 and \$2 million respectively. Dr. Moser did not introduce evidence of liability as to these settling defendants, nor did he attempt to place them on the special verdict form. The jury verdict was ultimately entered against Dr. Moser with the jury awarding economic damages and non-economic damages in excess of the MICRA cap, which the trial court later reduced to \$250,000. On appeal, the Supreme Court rejected Dr. Moser's argument that he was entitled to offset the award of non-economic damages with the pretrial settlement, because he conceded that he had not made any showing of apportionment of liability to those settling parties.

The *Rashidi* decision should compel non-settling healthcare provider defendants to put on evidence at trial apportioning fault to the settling defendants, and include them on the special verdict form. It might also provide the plaintiffs' bar with a backdoor to subvert the MICRA damages cap, by naming additional parties simply for purposes of settling pretrial, with the expectation that plaintiffs can obtain an additional \$250,000 at the time of trial.

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¹ *Rashidi v. Moser*, 60 Cal.4th 718 (2014).