

Maryland Appeals Court gives Defendants Burden of Proving Apportionment of Damages

13 Dec 2023

[Pamela J. Diedrich](#)

In *Williams v. Dimensions Health Corp.*, No. 0036, 2023 WL 5523951 (Md. App. Ct. Aug. 28, 2023), defendant challenging damages as having a proximate cause other than its negligence has the burden of proving apportionment.

Plaintiff claims his physician negligently caused a right leg amputation after a car accident. The MVA – not physician negligence -- necessitated a left leg amputation and other injuries. Defendant claims the court should apportion damages between future care costs necessitated by the accident versus those caused by physician negligence. The court denied the motion. Plaintiff won \$6,285,549.

On appeal the appeals court found that plaintiff presented sufficient evidence to support the jury's award and noted there was conflicting evidence regarding the proximate cause of the future medical care. Neither party raised divisibility or objected to the admission of plaintiff's experts' testimony about future care needs. Rather, the Defendant's experts testified the future needs were caused by the car accident, not physician negligence.

The court explained that where damages are theoretically divisible, the plaintiff's burden is to prove negligence was at least a contributing proximate result of the harm. *The burden then shifts to the defendant to either deny all liability or prove the harm caused can be divided and apportion the damages.* For divisibility to be an issue, the circuit court must make a finding as to the ability of the harm to be apportioned. If the circuit court does not determine that the injuries are divisible, it is the jury's role to determine divisibility and the harm apportionable. In *Williams*, no party asked the court to determine as a matter of law whether the claimed injuries were divisible. Because the time to raise the divisibility issue is through a *Daubert-Rochkind* hearing, at the admission of expert testimony, and/or jury instructions regarding the admissibility of expert testimony, the Court in this matter need not determine whether the injuries were divisible.

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