

SUPREME COURT OF LOUISIANA

No. 95-CC-2066

MARCIA THOMAS PENDLETON

Versus

ROBERT L. BARRETT ET AL

LEMMON, J., Dissenting

The Legislature, by providing in La. Rev. Stat. 40:1299.44C(5) that "the court shall consider the liability of the health care provider as admitted and established" when there is a settlement payment of \$100,000 on behalf of any qualified health care provider, contemplated that such a payment constitutes an admission (1) of malpractice by the provider and (2) of causation by the malpractice of damages of at least \$100,000. The intent of Section 1299.44C(5) was to prevent a health care provider from paying his or her statutory limits of liability of \$100,000 to be released from the action without any admission of malpractice or of liability because of the \$100,000 paid for the release. Thus, "liability," as used in Section 1299.44C(5), means an admission of liability for the malpractice and for the \$100,000 paid in damages.

Under the scheme of the Act, the malpractice victim, upon settlement payment of \$100,000 by a qualified health care provider, is relieved of the frequently difficult and expensive burden of proving malpractice and causation of the first \$100,000 in damages. Thereafter, "the only issue between the victim and the PFC is the amount of damages [in excess of \$100,000] sustained by the victim as a result of the admitted malpractice." Russo v. Vasquez, 94-2407 (La. 1/17/95); 648 So. 2d 879, 883. (emphasis added). As in any other tort case in which "liability" is admitted, the plaintiff

in a medical malpractice case under the Act has the burden of proving that the admitted fault of the tortfeasor caused the damages sought by the tort victim in excess of \$100,000.

The Legislature, in enacting La. Rev. Stat. 40:1299.44C(5), apparently utilized the phrase "liability" in the same manner utilized in authorizing separate trials of "liability" and "damages" in La. Code Civ. Proc. arts. 1562 and 1915. When the issues of "liability" and "damages" are bifurcated under these articles, the court separately tries (1) the issue of the defendant's "liability" based on his or her fault and (2) the issue of the damages caused by that fault. This interpretation of the word "liability" has worked well in that context, and I have not been shown any reason to conclude that the Legislature intended any other meaning of the word "liability" in Section 1299.44C(5).