

CIRCUIT	SUCCESS RATE			Notes
	Defendant	Plaintiff	Other	
1 <sup>st</sup>	62% (8/13)	38% (5/13)		
2 <sup>nd</sup>	89% (8/9)	11% (1/9)		
3 <sup>rd</sup>	33% (3/9)	33% (3/9)	33% (3/9)	Patient must present to ER for EMTALA to apply
4 <sup>th</sup>	65% (17/26)	23% (6/26)	12% (3/26)	Recovery limited by \$1 M state medical malpractice statutory cap. Withholding life-sustaining treatment is an EMTALA violation even if considered medically and/or ethically inappropriate (Baby K cases).
5 <sup>th</sup>	57% (16/28)	39% (15/28)	4% (1/28)	Patient must present to ER for EMTALA to apply.
6 <sup>th</sup>	88% (16/17)	6% (1/17)	6% (1/17) both prevailed.	Plaintiff must establish an improper motive on the part of the hospital and that the hospital knew of the emergency medical condition when it discharged the patient.
7 <sup>th</sup>	67% (10/15)	33% (5/15)		Patient need not come to the ER at all but may request treatment through telemetry communications and paramedics.
8 <sup>th</sup>	45% (5/11)	55% (6/10)		
9 <sup>th</sup>	78% (14/18)	17% (3/18)	5% (1/18)	
10 <sup>th</sup>	82% (27/33)	15% (5/33)	3% (1/33) neither prevailed.	
11 <sup>th</sup>	33% (3/9)	33% (3/9)	11% (1/9) neither prevailed and 22% (2/8) both prevailed.	
D.C.	75% (3/4)	25% (1/4)		

**ALL CIRCUIT TRENDS:**

1. Strict liability rather than negligence under EMTALA.
2. No private action against physicians.
3. Need not allege economic or other motive to state claim under EMTALA (except for 6<sup>th</sup> Circuit).
4. Strict two-year statute of limitations under EMTALA.
5. EMTALA not a federal remedy for medical malpractice.
6. Compliance with hospital standard screening procedures constitutes an “appropriate screening.”
7. Plaintiffs must allege disparate treatment to show screening was inappropriate.
8. Hospitals’ duty to stabilize a patient arises only once an emergency medical condition is detected.
9. State statutory provisions may be preempted by EMTALA if they directly conflict.