

Mental Anguish Claims and Punitive Damages in Delaware: Plaintiffs Must Do More Than Plead

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The Delaware Superior Court reaffirmed that plaintiffs must prove that a substantial, ongoing physical symptom of a mental anguish is required to sustain a mental anguish claim. The recent case of *Estate of Susan J. Moulder, et al. v. SuJung Park, M.D., et al.* addressed this issue in the context of a delayed diagnosis of cancer claim. The Delaware Superior Court held that emotional disturbances, transitory in nature, are insufficient, and emphasized that plaintiffs need causation expert testimony linking any physical symptoms to the mental anguish claim.

In *Moulder*, the plaintiffs alleged a failure to timely review and/or notify the patient of new pulmonary nodules detected on a six month follow-up CT scan. Evidence revealed that the patient was not a candidate for treatment due to an underlying health condition. Plaintiffs contended the delayed notification resulted in pain and suffering, and severe emotional distress, including depression and anxiety, as well as loss of trust, anger, increased drinking, and decision to seek a second medical opinion. The court found that any physical deterioration was unrelated to the physician's conduct, and the psychological injuries alleged did not amount to sustained physical phenomena. The basis for that view was because the plaintiffs did not have an expert to causally link the depression and anxiety to the physician's care. As a result, the court granted summary judgment in favor of the defendants.

In a separate assessment, the court found that, generally, physician decision making cannot support punitive damages. Despite dismissing the underlying claims that would derivatively discharge punitive damages, the court analyzed Delaware's statutorily-based requirements for such a claim in a medical malpractice matter. It was tasked with comparative arguments that either: (1) the physician made a medical decision based on social, environmental, and medical concerns to seek a six month follow-up CT scan before notifying the patient; or (2) the physician failed to timely review and/or notify the patient of the new pulmonary nodules. Medical decision making, or the omission to treat, without malice, does not arise to "wanton or willful," "conscious indifference," or "I don't care attitude." Even alone, the court ruled that the punitive damages claim failed on the merits.

The court's ruling sets persuasive authority that depression and anxiety are insufficient for a mental anguish claim where no physical injuries are present. Plaintiffs cannot proceed with such claims without expert opinions. Physician decision making, even an omission of treatment, without malice, will not permit punitive damages.

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