



Alerts

Dispositive Motions Should Proceed Only After Expert Discovery Completed

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Health Care Alert

This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition

Issue

What is the appropriate time for filing a dispositive motion in medical malpractice actions?

Schicheng Guo, as Special Administrator of the Estate of Shingian Bao, deceased v. International Teleradiology, LLC, Swedish Covenant Hospital, Advocate Health and Hospitals Corporation d/b/a Lutheran General Hospital, et al. 2020 IL App (1st) 190090

Case Summary

Plaintiff's decedent came to the Emergency Department at Swedish Covenant with a severe headache for which he underwent a CT scan that was interpreted as normal by the defendant radiologist. The decedent was discharged, but later was asked to return when the CT was subsequently interpreted to indicate bleeding. Decedent instead went to Lutheran General where he was tested further—but not diagnosed with a bleed—and discharged. He died three days later.

Pursuant to the case management order, the trial court set a schedule for controlled expert witness discovery to be completed by October 30, 2019, four days after the deadline for filing dispositive motions. On October 17, 2019, the radiologist and Swedish Covenant filed motions for summary judgment on proximate cause which argued the evidence was insufficient to establish that (1) the missed brain bleed was the same bleed that killed decedent; (2) the missed brain bleed affected the course of treatment at Lutheran General; and (3) Swedish Covenant's failure to transmit the CT images to Lutheran General would have changed the outcome. The trial court granted summary judgment to both defendants.

The appeals panel found that the trial court erred in dismissing vicarious liability claims against Swedish Covenant, as the time period for expert discovery on the issue of proximate cause had not expired at the time motions for summary judgment were filed. The *Bao* court underlined that a factual question remained as to whether doctors at Lutheran General would have treated decedent differently if they had possession of the actual CT images from Swedish Covenant in addition to the CT report. The appellate court also emphasized the existence of a question of fact as to whether Swedish Covenant's failure to transmit the CT images resulted in the Lutheran General doctors' failure to diagnose and treat decedent, and consequently caused his death.

Takeaway

The court's ruling indicates that dispositive motions should only proceed after expert discovery has been completed.

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