



Alerts

PERS Company Prevails at Trial of Wrongful Death Suit

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Hinshaw Alert

A recent case involving a PERS (Personal Emergency Response System) was decided in the Appellate Court of Connecticut, *Theodore v. Lifeline Sys. Co.*, 173 Conn. App. 291, 2017 Conn. App. LEXIS 211 (Conn. App. Ct. May 23, 2017).

To prove proximate causation, the plaintiff must show there was a direct causal connection between the negligence or product defect and the injury. This case is an example of a successful proximate cause defense where the court found the plaintiff failed to meet her burden of proof.

Decedent's sister brought a wrongful death suit against the independent living services company and PERS company which provided the home medical alert system services. The plaintiff alleged that the 88-year-old decedent was found dead in her home after attempting to summons help by means of her medical alert system. The decedent was found wearing her personal help button and a red light was flashing on the communicator device which occurs after a help button has been pressed. The medical alert system did not transmit a signal to the emergency call center due to the fact that the decedent's telephone was off the hook. The decedent's primary care physician testified the decedent had a GI bleed which was a contributing factor in her death, but the doctor could not opine as to the actual cause of death or whether the medical alert system would have saved her life. Plaintiff alleged theories of negligence, breach of contract, and strict product liability. The plaintiff alleged various negligence theories including that the independent living services company who installed the system was negligent in failing to install the communicator device so that when the help button was pressed the system would seize the decedent's telephone line permitting an emergency signal to be transmitted from the decedent's residence to the call center. At the close of Plaintiff's case, the trial court directed a verdict in favor of defendants finding the plaintiff failed to present evidence to support causation which must be based upon more than conjecture and surmise.

The Appellate Court affirmed the directed verdicts for the defendants agreeing the plaintiff did not present sufficient evidence to demonstrate what caused the decedent's death, whether she remained alive and for how long after attempting to summons help, whether and for how long she was able to experience suffering, or whether she had any awareness that a medical emergency existed. The jury was left to speculate whether the decedent remained

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conscious after collapsing for a significant period of time or whether she had experienced a fatal health condition that caused her death before emergency assistance would have arrived had the medical alarm system functioned properly. The jury could have only found in favor of plaintiff by engaging in conjecture and speculation, and thus the defendants were entitled to directed verdicts.

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