

NEW YORK HIGH COURT REJECTS MEDICAL MONITORING CLAIMS IN ABSENCE OF PHYSICAL INJURY

by
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In a significant and—to some—surprising development, the New York Court of Appeals recently refused to recognize an independent cause of action for medical monitoring in the absence of a present physical injury. See *Caronia v. Philip Morris*, No. 227, slip op. (N.Y. Dec. 17, 2013), available at <http://www.nycourts.gov/ctapps/Decisions/2013/Dec13/227opn13-Decision.pdf>. By this ruling, New York joined other states that have rejected medical monitoring claims under similar circumstances.

The victory was not easily won, however, or easily written. The court divided 4-2 with one Justice not participating – and the majority, led by Justice Pigott, had to thread its way through several problematic precedents to reach its decision. Nevertheless, in future New York cases, plaintiffs cannot recover medical monitoring relief by merely showing an “increased risk” of an illness that may—or may not—develop in the future.

Background and Procedural History. In *Caronia*, current and former cigarette smokers filed a putative class action against Phillip Morris Company in federal district court for the Eastern District of New York. Although none of the plaintiffs was suffering from lung cancer or even “under investigation” for “suspected lung cancer,” they claimed that they had an “increased risk” of developing the disease. They requested equitable relief in the form of a court-supervised program of medical monitoring to assist in the early detection. Thereafter, plaintiffs filed an amended complaint in which they pleaded an independent claim for medical monitoring. Notwithstanding the amendment, the district court dismissed the action. The U.S. Court of Appeals for the Second Circuit affirmed the dismissal of all claims except the “separate” claim for medical monitoring. Since the viability of that claim had not been resolved under New York law, the appeals court certified the question to the New York Court of Appeals.

Decision of the New York Court of Appeals. In response to the certified question, New York’s high court refused to recognize an independent claim for medical monitoring under New York law. According to the Court, medical monitoring is not a separate tort, but rather a form of “consequential damages” available upon proof that the plaintiff suffered an actual injury caused by the defendant. Slip op. at 4. The Court recognized that every prior New York case that considered medical monitoring required allegations and proof of an actual physical injury as a prerequisite for considering medical monitoring damages—and it refused to depart from those precedents. Slip op. at 5-7.

Some may be surprised by this result. Some New York precedents arguably suggested a contrary result—so much so that the Court noted that federal courts sitting in New York have “surmised” that “this Court would recognize an equitable medical monitoring cause of action where the plaintiff’s only “injury” is the “financial burden associated with medical monitoring.” Slip op. at 9. Nevertheless, the majority explained that these precedents dealt with injuries that accrued at the time of *exposure*, as opposed to those which developed in the future. Slip op. at 7. According to the majority, any case that can be read otherwise “should not be followed.” Slip op. at 9.

Although the plaintiffs urged the Court to follow a line of cases from other states that reached a different result, the majority declined to do so—noting the danger of permitting “tens of millions” of potential plaintiffs to recover monitoring costs, “effectively flooding the courts while concomitantly depleting the purported tortfeasor’s resources for those who have actually sustained damage.” Slip op. at 12 (quoting *Metro-North Commuter R.R. Co. v. Buckley*, 521 U.S. 424, 443-44 (1997)).

Conclusion. *Caronia* properly refused to recognize an independent cause of action for medical monitoring. As a result, New York continues to recognize monitoring only as an element of consequential damages to remedy a distinct physical injury. Any other result disregards the important medical, scientific and legal distinctions between “exposure” and “injury”—and unjustly allows persons who are presently unharmed to recover damages for an illness which may never arise. The New York Court of Appeals rightly held that courts have no business engaging in such speculative exercises.

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