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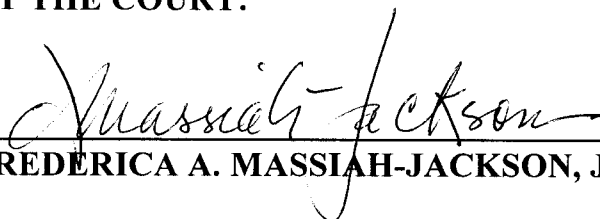
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ESTATE of DAVID ALBERT, Deceased	:	
Plaintiff	:	
	:	JUNE TERM, 2017
vs.	:	
	:	NO. 1122
THOMAS JEFFERSON UNIVERSITY	:	
HOSPITAL, INC. d/b/a THOMAS	:	
JEFFERSON UNIVERSITY HOSPITAL,	:	
JEFFERSON PHYSICIANS,	:	
MEMORIAL SLOAN KETTERING	:	
HOSPITAL CANCER CENTER,	:	
ST. MARY MEDICAL CENTER,	:	
BARBARA H. SHONBERG, M.D., and	:	
PERSONALIZED INTERNAL	:	
MEDICINE, P.C.	:	
Defendants	:	

ORDER

And Now, this 3/31 day of January, 2020, after consideration of the Motion for Summary Judgment Relating to Jurisdiction filed by Defendant Memorial Sloan Kettering Hospital Cancer Center, the Memoranda in Opposition filed by Plaintiff and All Co-Defendants, after oral argument held on November 6, 2019, and for the reasons set forth in Court Exhibit "A" attached hereto, it is hereby **ORDERED** that the Defendant's Motion is **DENIED**.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.

Albert Vs Thomas Jeffer-ORDER



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Court Exhibit "A"

Sloan Kettering contends that Pennsylvania courts, as a matter of law, do not have specific personal jurisdiction to preside in this litigation. The Defendant-Hospital argues that the Plaintiff's corporate negligence claims fail to establish that any action taken by this Defendant caused Plaintiff-Decedent harm in Pennsylvania. Further, that vicarious liability claims fail to establish that actions by an agent or representative of this Defendant caused Plaintiff-Decedent harm in Pennsylvania. See, Sloan Kettering Memorandum, dated September 3, 2019, pages 17-22; Hearing on November 6, 2019.

Plaintiff-Estate responds in the Memorandum, filed October 4, 2019, (unpaged):

“To emphasize yet again: in this case, there is no alleged negligence at any of the New York encounters and there is no injury at any of the New York encounters. The only negligence occurs while David is in Pennsylvania, when false, misleading and incomplete information was communicated to him and his Pennsylvania physician – despite the defendant's undertaking to actively work with David's Pennsylvania physicians to coordinate his care in Pennsylvania.” (emphasis in original)

See also, Hearing on November 6, 2019.

When considering a Motion for Summary Judgment as to personal jurisdiction, the Court must construe the evidence, and all inferences and conclusions from the evidence, in a light most favorable to the non-moving party. Once the moving party supports objections to personal jurisdiction, the burden shifts to the party asserting it. Each case must be decided based on the particular circumstances and facts presented.

The reliance by Defendant-Sloan Kettering on Mendel v. Williams, 53 A.3d 810 (Pa. Superior Ct. 2012) is misplaced. As Plaintiff-Estate and all Co-Defendants argue, the claims for negligence here are injuries incurred while Plaintiff-Decedent was present in Pennsylvania. Specifically, Sloan Kettering affirmatively contacted Mr. Albert in Pennsylvania and gave him false information about his MRI results; Sloan Kettering failed to forward Mr. Albert's medical records to his Pennsylvania physicians while he was in Pennsylvania; Sloan Kettering failed to advise Mr. Albert to stop taking daily aspirin while he was in Pennsylvania; Sloan Kettering failed to coordinate care with Mr. Albert's medical providers while he was in Pennsylvania. It was these and other failures which caused harm to David Albert.

Plaintiff-Estate's Third Amended Complaint provides, in part:

“61. On October 29, 2015, David Albert travelled to MSK in NY for the MRI.

62. The MRI was performed that day.

63. After the MRI, David Albert returned to Pennsylvania.

64. From this point forward until the end of December, 2015, David Albert was a resident of Pennsylvania and did not return to MSK in New York.

65. As of the date of this MRI, David Albert had not yet suffered any of the injuries that are the subject of the claims in this case resulting from defendants' conduct.

66. Following the MRI, after David Albert had already returned to Pennsylvania, the MRI was interpreted by MSK radiologist Dr. Robert Young.

67. While David Albert was located in Pennsylvania, the MRI which was interpreted by radiologist, Dr. Robert Young as follows:

IMPRESSION: Sub cm left convexity subdural fluid collection. Probably treatment related volume loss, gliosis and white matter changes. Comparison with old studies would be helpful.

68. This period of time, while David Albert was in Pennsylvania, was the first point at which MSK knew and should have known that David Albert had a risk of bleeding in his head.”

Six weeks after the MRI test, on December 18, 2015 at 2:43 p.m., one of Defendant-Sloan Kettering’s physicians instructed an associate:

“So, the message to David is that there were no worrisome problems found with his MRI. He has a very slight increase in some scarring and this may be associated with his symptoms (we don’t want him worried that this will be progressive ...).”

She confirmed at 3:34 p.m.:

“Will let him know, thanks for clarifying. Will just tell him no worrisome problems found with his MRI.”

This information was conveyed to Plaintiff-Decedent . . . **It was False.**

The Addendum to the October MRI Report states that the Sloan Kettering radiologist identified a “new” fluid collection in Decedent-Albert’s brain:

“As compared to an outside MRI from March 25, 2012 that is now available for comparison, the current study shows **that the small left diffuse convexity subdural fluid collection is new**; and the mild diffuse volume loss, small areas of gliosis and white matter changes have all slightly increased.” (emphasis added)

That new information was not conveyed to the Decedent or his Pennsylvania physicians until it was too late to avoid the catastrophic sequelae. On or about December 30, 2015, Co-Defendant-Dr. Barbara H. Shonberg explained the harm caused by the Defendant-Hospital's inaction:

“Dr. Shonberg was annoyed she had not had the original brain MRI results. . . . She said had she known, she would have followed him more closely and done a CT scan.”

Finally, the record also reveals that at least one of Sloan Kettering physicians consulted with and participated in Plaintiff-Decedent's care and treatment at Co-Defendant St. Mary Medical Center in Philadelphia. See, Mendel, 53 A.3d at 822. This continued intervention and treatment in Mr. Albert's forum state has been criticized by Plaintiff's expert. See, Exhibit N, Plaintiff's Memorandum, dated October 4, 2019:

“Dr. Oeffinger thus should have refrained from providing any input, and particularly input that the etiology of the patient's stroke was merely pre-existing radiation treatment, in contrast to other factors. If for some reason Dr. Oeffinger was to give this input anyway, it should have clearly qualified with a strong caution that, in this setting where the patient suffered a massive brain injury and surgery, it was highly unlikely that radiation related changes had by sheer coincidence just now caused him to have a stroke. To the extent this caused the St. Mary providers to have a lesser index of suspicion for other causes of stroke that required treatment, this would have increased the risk that such other causes were not timely diagnosed and treated.”
(emphasis added).

When considering the entire record, jurisdiction is authorized by Pennsylvania's Long-Arm Statute, 42 Pa. C.S.A. §5322.

The record also supports the conclusion that Due Process will permit specific jurisdiction where, as here, Defendant-Sloan Kettering engaged in numerous contacts with Pennsylvania by promoting the special Program for Adult Survivors of Pediatric Cancer with Plaintiff-Decedent and his family; by promising Plaintiff-Decedent and his family to coordinate care and monitor medical services; with national marketing and recruitment for clinical trials focusing on the Northeast in general and the Lehigh Valley, Pennsylvania in particular. Specific jurisdiction is clearly permitted because the contacts are extensive. Sloan Kettering would have reasonably anticipated being haled to Pennsylvania court. See also, Paragraphs 25-27, Plaintiff's Third Amended Complaint for additional details.

After careful consideration of the particular facts and circumstances herein this Court concludes that Plaintiff-Estate has met its burden to establish that Defendant-Sloan Kettering caused harm and tortious injury to this Commonwealth by its acts and omissions within and outside this Commonwealth. 42 Pa. C.S.A. §5322(a)(4). Further, Plaintiff-Estate established that the Defendant-Hospital did purposefully establish minimum contacts with Pennsylvania and could reasonably anticipate being called to Court in Pennsylvania. This Motion for Summary Judgment Relating to Jurisdiction is Denied in its entirety.

A handwritten signature in black ink, appearing to be 'J. J. G.', is located in the lower right quadrant of the page.