

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAMIRA MANGINI and JOSEPH MANGINI : CIVIL ACTION
v. :
NORTHEAST COMMUTER SERVICE :
CORPORATION, d/b/a t/a NATIONAL :
RAILROAD PASSENGER CORPORATION :
a/k/a AMTRAK :
v. :
THE HOSPITAL OF THE UNIVERSITY :
OF PENNSYLVANIA : NO. 97-1477

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 2, 1998

Plaintiff alleges that she was injured in a slip-and-fall accident at 30th Street Station, on February 4, 1997, she commenced this lawsuit by filing a Writ of Summons in the Court of Common Pleas of Philadelphia County. The defendant removed the action to this court.

On July 10, 1997, the defendant Amtrak obtained leave to join the Hospital of the University of Pennsylvania as a third-party defendant, on the theory that the hospital's medical malpractice exacerbated the wrist injury plaintiff sustained in the fall. Trial is scheduled to begin on July 27, 1998.

On May 8, 1998, plaintiffs filed a "Motion to Obtain Leave to File an Amended Complaint Joining the Hospital of the University of Pennsylvania as a First Party Defendant." The

third-party defendant hospital opposes the motion. Amtrak supports the plaintiffs' request.

The defendant Amtrak correctly notes the indisputable fact that any direct claim by plaintiffs against the hospital for medical malpractice is time-barred. If the hospital was negligent, its negligence occurred more than three years ago. The allegedly incorrect operative procedure was performed in early February 1995; plaintiff's deposition testimony makes clear that she was dissatisfied with the results, and believed the treatment had been improper, not long afterwards; the "discovery rule" cannot successfully be invoked to make the present application timely.

Moreover, quite apart from the limitations issue, there is no conceivable justification for the further delay, until the eve of trial, in asserting a direct claim against the hospital. If the present application were granted, further discovery would need to occur involving plaintiffs' recently-obtained expert.

It should be noted, also, that denial of the present application does not preclude plaintiffs from recovering damages for all of the injuries sustained in the accident, including damages associated with the alleged medical malpractice of the hospital, if the original defendant, Amtrak, is held liable.

Plaintiffs' motion will be denied.

An Order follows.

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RAILROAD PASSENGER CORPORATION	:	
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	:	
v.	:	
	:	
THE HOSPITAL OF THE UNIVERSITY	:	
OF PENNSYLVANIA	:	NO. 97-1477

ORDER

AND NOW, this day of June, 1998, IT IS ORDERED
that Plaintiffs' "Motion to Obtain Leave to File an Amended
Complaint Joining the Hospital of the University of Pennsylvania
as a First Party Defendant" is DENIED.

John P. Fullam, Sr. J.