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## *Red Cross granted punitive damage immunity for HIV-infected blood transfusion*

by Raquel Villanueva

In *Barton v. American Red Cross*, 826 F. Supp. 407 (M.D. Ala. 1993), an United States district court held that a patient suing the Red Cross, the Southeast Alabama Medical Center, and two doctors for negligence and wanton failure to screen properly for HIV-infected blood was not entitled to reinstatement of dismissed claims. The court further held that the Red Cross was immune from the patient's punitive damages claim for failure to adequately screen for contaminated blood. The court denied the patient's motion for reinstatement of claims against defendants and granted the Red Cross' motion to strike the claim for punitive damages.

On July 24, 1988, Plaintiff R.A. Barton ("Barton"), a patient of defendant Dr. Moore, received a blood transfusion at the Southeast Alabama Medical Center ("Medical Center"). The blood was supplied by a Red Cross volunteer donor. Defendant Dr. McGowan supervised the Red Cross procedures for screening blood from volunteer donors. On June 9, 1990, the Red Cross discovered that the blood transfused to Barton had tested positive for HIV. However, the Red Cross did not notify the Medical Center until December 13, 1990. After Barton received notification of the contaminated blood on January 3, 1991, she took a blood test and was later informed by Dr. Moore that she had tested positive for HIV.

Barton's blood was again

tested using the more sophisticated Western blot test to confirm the results. Although it is uncertain when Barton was informed of her Western blot results, the laboratory report, dated on January 12, 1991, stated that the results should be available within seven days. A letter to Dr. Moore from a Dr. Coe, dated January 23, 1991, indicated that Barton's HIV status had been confirmed. However, Barton alleged that she could not have known of the results before January 20, 1991, and believed that Dr. Coe's office orally informed her of the Western blot results on January 22, 1991.

### **Patient seeks relief under the Alabama Medical Liability Act**

On July 18, 1991, Barton, including her husband and two sons, sued the Red Cross, the Medical Center, Dr. Moore, and Dr. McGowan for negligent and wanton failure to screen properly for HIV-infected blood. Barton sought relief under the Alabama Medical Liability Act ("AMLA") and brought a punitive damages claim against the Red Cross. The court granted the motion to dismiss filed by the Medical Center and Dr. Moore based on AMLA's statute of limitations. Subsequently, the Red Cross and Dr. McGowan removed the case to federal court and moved for summary judgment, asserting that

AMLA's statute of limitations and claim preclusion barred Barton's claims. The district court denied this motion, finding that the state court's dismissal of the claims against the Medical Center and Dr. Moore was not a final order. The court also found that the precise timing of Barton's discovery of her cause of action was a question of fact for the jury. Thus, the only remaining issues to be decided by the district court were Barton's motion to reinstate claims against the defendants and the Red Cross' motion to strike the claim for punitive damages.

The AMLA requires that an action be brought within two years after the act giving rise to the claim occurs. If a cause of action could not reasonably have been discovered within this period, AMLA allows the plaintiff to file the action within six months from either the date of discovery of the cause of action or the date of discovery of facts reasonably leading to discovery of the cause of action. Barton contended that her failure to commence her suit within the two year statutory period did not bar her claim because she discovered her cause of action after January 18, 1991, which fell within the six month statutory period. The Defendants countered that Barton failed to assert this date of discovery issue before the state court and also waited sixteen months to move for reinstatement. Therefore, reinstatement would be unfair.

## **Court denies reinstatement of claims against doctor and Medical Center**

The district court stated that Barton's motion to reinstate was really a request for reconsideration of the state court's dismissal. On a motion to reconsider, the courts usually refuse to hear evidence not within the movant's knowledge at the time of the prior decision. The district court agreed with the defendants, finding that the plaintiffs did not present their date of discovery argument before the state court. Barton only had asserted that Dr. Moore and the Medical Center should be estopped from using the statute of limitations defense since they had caused the delay. Furthermore, the district court stated that Barton neither asserted the date she discovered her cause of action nor presented evidence concerning the need for the confirmation test. Therefore, the state court did not estop the defendants from pursuing their statute of limitation defense. Barton's failure to show that the state court erred led the district court to deny reconsideration of the state court's finding.

Barton responded to the Red Cross' and to Dr. McGowan's motion for summary judgment by presenting her own affidavit testimony, which stated that she did not receive her final test result until January 20, 1991. Barton maintained that she could not have learned of facts leading to discovery of her cause of action until that date. However, because Barton did not provide a reasonable explanation for her failure to make this argument before the state court, the district

court refused to consider her affidavit testimony in deciding the motion to reinstate. Moreover, although Barton claimed that the defendants fraudulently concealed the donor's HIV- positive status for six months, she did not allege that the defendants prevented her from presenting the date of discovery argument. Thus, the district court found that Barton's lack of knowledge would not have prevented her from stating the date of discovery claim.

Contrary to Barton's contention that she moved for reinstatement within a reasonable time, the district court found that she could have moved to reconsider once the case was removed to federal court. Even if Barton had waited until the state court decided the motion for summary judgment, she waited an additional two and a half months to file the motion to reinstate without an explanation. Finally, Barton did not present reasons why justice would require the district court to grant the motion to reinstate under Federal Rule 60 (b)(6). Equity would weigh in favor of denying Barton's motion because of her failure to explain why she did not raise the date of discovery issue and why she delayed seeking reconsideration. Therefore, the district court denied the motion to reinstate.

## **Court denies punitive damages claim against Red Cross**

Barton recognized the Red Cross' status as a federal instrumentality but did not believe it was entitled to punitive damages

immunity. She then brought an action against the Red Cross for punitive and compensatory damages, claiming that public policy should exempt the Red Cross from punitive damage immunity. In support of this contention, Barton maintained that the Red Cross has a public health and safety function to ensure the safe supply of blood. Barton alleged that the Red Cross failed to exercise due care in screening blood and waited six months to inform her of the HIV-infected blood. She also suggested that the need to protect the public welfare should be balanced against the need of federal instrumentalities to conduct business. Punitive damages should be imposed to deter the Red Cross from endangering the public health and safety.

Rejecting the public health and safety function argument advanced by Barton, the district court reasoned that Congress did not express a need for an exception to punitive damage immunity. Congress could have created such an exemption in the federal instrumentality's charter if it had intended an exemption. Furthermore, the district court emphasized that even the Federal Tort Claims Act did not create an exception for government employees responsible for the public health and safety. 28 U.S.C.A. § 2674.

Finally, the district court also rejected Barton's suggestion that the need for protecting the public welfare should be weighed against the need of federal instrumentalities to conduct business. Therefore, the district court granted the Red Cross' motion to strike the claim for punitive damages.